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COTTON MERCHANDISING PRACTICES

LETTER

FROM

THE CHAIRMAN OF THE FEDERAL TRADE COMMISSION

TRANSMITTING

A REPORT OF THE FEDERAL TRADE COMMISSION ON COTTON MERCHANDISING PRACTICES

IN RESPONSE TO SENATE RESOLUTION NO. 252 OF JUNE 7, 1924

JANUARY 20, 1925.—Referred to the Committee on Agriculture and Forestry

WASHINGTON
GOVERNMENT PRINTING OFFICE
1925

REPORTED BY MR. SMITH

SENATE RESOLUTION 327

IN THE SENATE OF THE UNITED STATES,
February 3 (calendar day, February 6), 1925.

Resolved, That the report of the Federal Trade Commission on cotton merchandising practices, transmitted to the Senate on January 20, 1925, in response to Senate Resolution No. 252, be printed as a Senate document.

Attest:

GEORGE A. SANDERSON,
Secretary.

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FEDERAL TRADE COMMISSION

VERNON W. VAN FLEET, *Chairman.*
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HUSTON W. THOMPSON.
OTIS B. JOHNSON, *Secretary.*

LETTER OF TRANSMITTAL

FEDERAL TRADE COMMISSION,
Washington, January 20, 1925.

SIR: I have the honor to transmit herewith a report of the Federal Trade Commission with respect to cotton merchandising practices. This report is submitted in response to Senate Resolution No. 252, dated June 7, 1924.

By direction of the commission.

Cordially yours, VERNON W. VAN FLEET,
Chairman.

To the PRESIDENT OF THE UNITED STATES SENATE,
Washington, D. C.

ACKNOWLEDGMENT

For the preparation of this report the commission acknowledges especially the services of Messrs. Byron Phelps Parry, Walter M. Twombly, and John J. Baney.

LETTER OF SUBMITTAL

FEDERAL TRADE COMMISSION,
Washington, D. C., January 20, 1925.

To the PRESIDENT OF THE SENATE.

SIR: There is transmitted herewith, in repsonse to Senate Resolution 252, June 7, 1924, a report on cotton merchandising practices.

Abuses in handling consigned cotton.—In handling cotton consigned to merchants or factors various methods are employed which are condemned by most factors and other members of the trade, and sometimes by the entire trade. These methods are: (1) Merchandising by factors, (2) failure to remit full price obtained, (3) selling cotton without instructions, (4) borrowing on shippers' cotton in excess of advances, (5) borrowing excessively on short-weight bales and low-grade cotton, (6) loans to consignees and merchants on their own warehouse receipts, and (7) repledging pledged receipts.

From a survey made of the existing laws it is clear that many of these practices are illegal. None the less the fact remains that losses are frequently incurred under the present methods of handling cotton. The question may be raised, therefore, as to whether the remedy does not lie in improving the methods of handling.

It seems obvious that much could be done by the exchanges and the banks to improve conditions simply through a more general enforcement of rules and regulations of the character of those which have already been adopted in certain parts of the Cotton Belt. Assuming that such remedial action should follow the lines of voluntary measures taken by the trade and the banks, the following suggestions are offered:

(1) The cotton exchanges should adopt rules whereby the consignee is forbidden to sell cotton to himself or any organization in which he is financially interested. If this be deemed too drastic, he should be forbidden to do so without the express consent of the consignor. Appropriate penalties by way of suspension and expulsion should be provided to enforce these rules. This should, of course, be subject to proper qualifications permitting the consignee to sell the cotton to himself or to others to protect advances to consignor in the event of a market decline.

(2) The exchange should be required to keep records of spot sales, including exact time of all sales, grades, staples, etc., and to provide the necessary mechanism to enable the consignor to compare the price obtained by him on sales to the factor with other sales of cotton of similar character in the same market.

(3) The cotton exchanges should require factors to report to their shippers the names of the purchasers of their consignments.

(4) Exchange rules should require the suspension or expulsion of any member not returning the full amount of the sales price, less the proper deductions, to the consignor.

(5) The exchanges and the banks should both adopt rules requiring cotton factors to obtain notes from shippers covering all advances made and further requiring them to present these notes to the banks in applying for all loans secured by consigned cotton.

(6) Cotton shippers, instead of consigning cotton to the factor without reservation, should consign either to themselves, or to the factor as agent for themselves. If this were done, persons with whom the bill of lading is negotiated will be on notice that the factor is acting as the agent of the shipper. Banks and cotton exchanges would be performing a real service if they helped to bring this about.

(7) The block receipt for a number of bales of cotton should be abolished and the single-bale warehouse receipt adopted in its stead. This form of receipt has been in use successfully at Memphis and also at New Orleans. All the exchanges should adopt this form of warehouse receipt. The banks are in a position to compel its adoption by refusing loans based on block receipts. Each single-bale receipt should be required to show the weight of the cotton and, at least in the case of consigned cotton, the grade.

(8) The banks should require that all receipts pledged as collateral and released on a trust receipt be indorsed on the back to that effect and the exchanges should adopt rules requiring that all receipts carry on the back a form of statement adapted to such an indorsement. This would serve to prevent receipts being pledged more than once.

(9) The exchanges and banks should adopt rules requiring that all shipments of consigned cotton be stored in a Federal licensed warehouse or a Federal licensed section of a warehouse and the banks should refuse to loan on consigned cotton unless so stored.

(10) The exchanges or the banks or both of them should adopt one of the following plans:

(*a*) Guaranty by a surety company of the weight and character of the cotton supporting each receipt.

(*b*) A custodian system for warehouses under the supervision of the exchange, or the banks, or both, providing for the signing of receipts by the custodian and inspection of warehouses and actual counting of bales.

(11) The uniform receipts act which is in effect in seven of the cotton States and Virginia should be adopted by all the cotton States. One provision of this act requires that if a receipt is issued for goods of which the warehouseman is owner, either solely or in common with others, the extent of his equity must be indicated on the receipt. Violations of this provision of the act should be made punishable by a heavy fine or imprisonment, or both.

It is believed that the adoption of these or similar measures would have an excellent effect, particularly if it were general. Voluntary action of this character by the exchanges and the banks appears to be altogether unlikely, however, in any short period of time. Without assuming to pass upon the constitutional power of Congress to legislate in this field, it is believed that if it be the judgment of Congress that the transactions discussed are a part of interstate commerce, Federal legislation would be of great value in remedying these con-

ditions. Such legislation might well be directed along substantially the following lines:

1. Making it a criminal offense for consignees in the course of interstate or foreign commerce (*a*) to sell the shipper's cotton to themselves without his express consent; (*b*) to fail to return to or to credit to the shipper within a specified time after the sale is made the full amount of the sales price, less proper deductions, such as commission fee, charges for storage, interest, and insurance.

2. Requiring consignees to obtain from shippers notes covering the amounts of all advances on cotton shipped or to be sold or shipped in interstate or foreign commerce.

3. Requiring all cotton warehouses licensed under the Federal Warehouse Act to use uniform single bale receipts with a form on the reverse side, which, when filled out, will show that the receipt in question has been pledged and is released under a trust receipt.

4. Requiring all shipments of consigned cotton in the course of interstate and foreign commerce to be stored in a Federal licensed warehouse or Federal licensed section of a warehouse. Warehouses licensed either in whole or in part under the Federal Warehouse Act are so numerous and widely distributed that such a requirement is not onerous.

By direction of the commission.

VERNON W. VAN FLEET,
Chairman.

COTTON MERCHANDISING PRACTICES

Section 1. Origin and Scope of Report.

Origin.—This inquiry was undertaken pursuant to the following resolution of the United States Senate of June 7, 1924:

SENATE RESOLUTION 252

Resolved, That for the purpose of providing the Congress with information to serve as a basis for such legislation as may in its opinion be found necessary for the regulation of the shipment or sale of cotton in interstate and foreign commerce, and to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation, the Federal Trade Commission is authorized and directed to investigate (in pursuance of the powers conferred upon it by subdivision (d) of section 6 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, as amended, and in pursuance of any other power conferred upon it by such act) the facts relating to alleged shipments and sales in interstate or foreign commerce by cotton factors or shippers of cotton held by them as security for advances, or otherwise, and to report to the Senate, not later than December 1, 1924, its findings thereon, together with such recommendations as it may deem advisable.

The work of carrying out the terms of this resolution was divided into two parts. The first part of the inquiry was directed to ascertaining the methods of handling cotton held by cotton factors and shippers as security for advances, and to determine whether there were any unfair practices or violations of the antitrust law in connection therewith. The second part involved an examination of the statutes and judicial decisions of the cotton-growing States to ascertain the status of the general laws affecting commerce in cotton and particularly as to the title to cotton consigned to factors or merchants.

Scope.—In the conduct of the first division of the work agents of the commission visited all the important cotton markets in the South where consigned cotton is handled to any great extent, and also New York City.

Practically all the information secured by these agents was obtained by interviews with cotton growers, country shippers, cotton factors, domestic and export merchants and shippers, warehousemen, and bankers. In addition, financial and operating results were obtained from representative factors in each market.

Section 2. Cotton Consignment Business.

Cotton factors.—In the larger cotton markets of the South, such as New Orleans, Memphis, Savannah, Houston, and Norfolk, and in a few of the smaller markets, are firms of cotton handlers known as factors. These factors handle cotton on consignment for the account of interior shippers in return for a commission upon the sale. (See p. 3.) This class of dealers transacts the great bulk of this business. Merchants and exporters at times also handle consignments on a

commission basis, but this business is incidental to their main business; that is, the buying and selling of cotton for their own profit. Because of the fact that factors handle such a large part of the cotton held as security for advances, the discussion in this report is confined in large measure to this class of dealers.

Handling consigned cotton.—The following is a brief outline of the ordinary consignment transaction. There are many variations which occur daily, and all that is attempted here is to present enough detail to make clear the discussion which follows later in the report.

Cotton consignments originate chiefly in the smaller markets. Probably the bulk of such shipments are made by interior buyers, ginners, and country merchants who have purchased the cotton from growers. Cotton factors frequently finance such country buyers by advancing funds with which they can buy cotton. Growers are also financed and in some cases this help is given in the spring before the crop is planted. In return for this aid the factor expects to receive the cotton bought or grown by the party financed. For further discussion of the factorage business, see Chapter II, section 6, of the commission's report on the cotton trade.

The chief purposes of consigning cotton to a factor are to obtain a price based on a sale by an experienced dealer in a competitive market; to permit the consignor to hold his cotton until he is ready to sell; to obtain the advice of the factor in regard to prices and other conditions of importance to the trade; and in many cases to obtain financial assistance. In other words, factors act in the capacity of bankers and advisers, as well as selling agents.

In most instances country shippers when consigning cotton draw on the factor in advance of the sale, frequently, in fact, before the cotton is received by the factor. This is accomplished by attaching a draft to the bill of lading and sending it to the factor. The amount per bale advanced by factors on consigned cotton depends in large measure upon the reliability of the consignor and also upon the state of the cotton market. The maximum advance is about 90 per cent of the value of the cotton, though the average maximum is from 70 per cent to 80 per cent. In many instances, of course, consignors either do not draw at all, or draw only a small part of the value of their cotton.

When consigned cotton is received by the factor it is weighed, sampled, and placed in a warehouse. Receipts covering the cotton are issued in the factor's name by the warehouseman. The length of time the cotton remains in storage depends, of course, upon the shipper's instructions to the factor. The factor may be directed (1) to sell at the market, (2) to sell at a specified price, or (3) to hold for further instructions. In practically every market where there are cotton factors will be found some cotton held by them for the account of country shippers, which has been in store for two or more years.

Sale of consigned cotton in the spot market.—The usual method of selling consigned cotton is over the factor's table on the basis of the actual samples drawn from each bale. There are but few variations between the different markets in this respect and these are of no importance to this inquiry.

When the shipper instructs the factor to sell his cotton the samples, which are taken from each bale upon arrival, are displayed and buyers are invited to make offers. When a sale is made the factor prepares

an account sales which shows the proceeds from the sale, less the following customary charges: Commission fee, freight, storage, insurance, and also interest, if an advance has been made against the cotton by the factor. Insurance is sometimes included in the storage charge. In some markets there are also charges for drayage, and if the cotton has been conditioned, or any other extra expense incurred, it is likewise deducted by the factor.

Sources of factor's profits.—The accounts of 21 representative factors were obtained, located in Norfolk, Savannah, Augusta, New Orleans, and Memphis. Certain details from these accounts have been combined and are presented below, on a per bale basis, to show the sources from which the profits of such firms are obtained. While the figures shown are for the years 1923–24 only, the additional information obtained makes it reasonably certain that the figures are fairly representative for the Cotton Belt as a whole and also of the results to be expected in a normal year.

The following tabular statement presents for the years 1923–24 the combined receipts per bale of these 21 cotton factors for cotton sold on commission:

	Average receipts per bale	Average disbursement per bale	Net balance
Commissions	$1.42		$1.42
Insurance	.35	$0.20	.15
Storage	.84	.54	.30
Interest	1.65	1.15	.50
Sample or "loose" cotton	.17		.17
Salaries		.98	−.98
General expense		.54	−.54
Total	4.43	3.41	1.02

Total bales sold on commission, 368,593.

Profit on commissions.—The foregoing statement shows that the average profit from commissions for the 21 firms in 1923–24 was $1.42 per bale. The commission charge differs widely between markets and often between factors in the same market. The size of the average commission charge shown by the statement ($1.42 per bale) is affected by the relatively large commissions received by the Memphis factors from which accounts were obtained; these factors reported an average commission charge of $3.39 per bale. In contrast with these figures, the accounts of the Norfolk factors showed only $1.47 per bale, or less than half the Memphis rate, while Augusta and Savannah factors averaged even lower, with a commission charge of $0.96 and $0.97 per bale, respectively. The bulk of the Memphis receipts, according to the secretary of the Memphis Cotton Exchange, are staple cotton running $1\frac{1}{16}$ inches and longer, which has a relatively high value as compared with the shorter staples. This condition combined with the fact that commission rates in this market are on the basis of a percentage of the value of the cotton probably accounts for the higher gross earnings from commissions at this market as compared with other markets. The rates for the other markets vary not only as between the markets but frequently within the same market. It was a somewhat general practice in some of the markets

from which accounts were obtained to cut the commission rate to favored customers. The usual commission rates were from $1 to $2 per bale.

Insurance.—The average amounts received from and expended on insurance, $0.35 and $0.20 per bale, respectively, show an average net gain to the factors on this item amounting to $0.15 per bale. It was stated that factors attempted to furnish insurance for their customers at cost. The foregoing figures, however, would indicate that factors made certain that they would not incur any loss on this item.

Storage.—An average gain of $0.30 per bale was obtained by the 21 factors on storage charges. This profit resulted from the fact that the factors usually contracted to use a stated space in a warehouse at a specified cost and then charged their shippers a sufficiently high per bale rate to yield a profit. In a very few cases the factors owned or controlled their own warehouses. Practically all factors stated that their chief sources of profit were from storage and interest. They prefer, of course, that cotton be held for long periods, since each month increases the returns from these items.

Interest.—The average amount per bale received by the 21 factors as interest was $1.65. The average amount expended was $1.15 per bale, leaving an average profit from interest of $0.50 per bale. This profit of 50 cents per bale was due to the fact that the rate of interest charged their country shippers was higher than that paid by the factors. The difference between these two rates was determined in some cases by the ability of the country shippers to borrow money. It is safe to say, however, that the average difference throughout the Cotton Belt in recent years has been close to 1 per cent, though a number of factors claim to add but one-half of 1 per cent to the rate paid by them.

Some factors maintain that the higher rate charged by them is justified by the risks of the business. Others claim that as a matter of fact the charge merely covers the expense involved in making the loans. In some instances it was contended that since the factor borrowed a definite sum for a specified period and paid interest for the entire period he was justified in charging his shippers a somewhat higher rate since some of his borrowed capital would be idle for a part of the period. In the case of a few factors it was found that shippers were paid interest on all funds left with the factor. The rate paid was generally 6 per cent.

Samples or "loose" cotton.—The item of $0.17 per bale for average profit from samples or "loose" cotton is practically all a clear gain to factors, because there is but little or no expense to be applied against it. As has been stated, samples are obtained from each bale of cotton as the basis of sales. The "loose" cotton is that which falls from the bales and also parts of the samples, all of which is carefully gathered. While the cost of gathering this loose cotton can not be segregated from the general expense, it is admittedly but slight.

General expense.—The average general expense per bale of conducting the factorage business, as shown by the foregoing statement, was $0.54. This item includes rent, licenses, local taxes, depreciation, wages (labor), telephone and telegraph, and all other items except those set forth in the statement.

Salaries.—The item of salaries averaged 98 cents per bale and includes salaries of clerks and officers.

Average profits per bale.—The total average receipts per bale for these 21 factors combined as shown by the foregoing tabulation amounted to $4.43 per bale. The average total outgo was $3.41 per bale, leaving an average profit from the operation of the factorage business of these concerns of $1.02 per bale.

Section 3. Abuses in Handling Consigned Cotton.

In handling cotton consigned to factors various methods are practiced which are condemned by other factors and other members of the trade and sometimes by the entire trade. It is the purpose of this section to set out seriatim some of these so-called abuses.

Merchandising by factors.—Cotton factors do not, as a rule, buy and sell cotton for their own account. All factors at times buy and sell cotton for their own account but for probably a majority of firms such cases are virtually accidental. There are some factors, however, that do a merchandising business in addition to handling consignments. The growth of this practice among factors seems to have been recent. Apparently it is due both to the increase of direct buying in the country by merchants and shippers and to the small size of the cotton crops in the past few years. The combination of these two elements has greatly reduced the volume of consignments and rendered the commission business less profitable.

Factors quite generally take the position that cotton merchants should not handle cotton on consignment and also that it is wrong for factors to merchandise cotton. They contend that a merchandiser or trader having a personal interest in the market is unable to do justice to his consignors; that he will view the market from the standpoint of a buyer, whereas, a factor, if he is to secure the best results for his customers should have the viewpoint of a seller. On the other hand, factorage firms that also merchandise cotton to a considerable extent maintain that their customers receive better service because of this merchandising. The fact that they buy and sell cotton, they claim, gives them an insight into market conditions that nonmerchandising factors do not have and they are thus enabled to obtain better prices for their consignors.

In some cases these factor-merchandisers refuse to buy the cotton that is consigned to them no matter what the prices offered by the other buyers may be. Other concerns of this sort at times do buy cotton consigned to themselves, but in such cases, they stated, the cotton was always offered to the other buyers and then sold to themselves at the highest price offered by these other buyers. This practice is not permitted in the grain trade. The Chicago Board of Trade rule 4, section 11, provides that "No member of this association is allowed under any circumstances to be both principal and agent in any transaction in any of the commodities dealt in under the rules of this board." The rule at Minneapolis is even more stringent:

MARCH 15, 1913.

Whereas it has recently come to the attention of this board that some shippers consigning grain for sale to members of the chamber of commerce have consented that such grain may be sold to any elevator or subsidiary company owned or controlled by the consignee, and that under such consent consigned grain is at times sold by commission merchants owning or operating elevators to such subsidiary companies; and

Whereas it further appears after careful investigation that the sales so made have been fairly made at full market price, and to the satisfaction of the consignors, many of whom believe that at times they are thereby given a larger market for their grain; and

Whereas although such transactions have been fairly conducted and entirely satisfactory to the parties thereto, both consignors and consignees, nevertheless, it is deemed by the board of directors to evidence an unwise practice which if continued and extended might furnish temptations for unfair dealing, or excuses for unjust criticism; now, therefore, be it

Resolved by the board of directors of the Chamber of Commerce of Minneapolis, That hereafter a member of this association to whom grain is consigned for sale as a commission merchant shall not sell such grain to any company, which is either owned or controlled by such consignee, whether the purchaser be an elevator company or buying company, or mill, or any other sort of a company, or to an elevator, mill or other company owning or controlling such consignee; and any member violating this resolution shall be subject to the same penalties as provided under section 7 of General Rule IV of this association.[1]

Sale of consigned cotton through the future markets.—In most of the more important spot cotton markets a majority of the factors maintain that they do not have any legitimate reason for using the future markets except as a price determining medium. That is, they argue that factors should not buy or sell cotton futures in the conduct of the factorage business.

In some markets, New Orleans in particular, there are a few factors that make direct use of the future markets in handling cotton for their customers. These factors hold that it is their duty to their customers to sell the latter's cotton at the best prices obtainable. At times this can be done by selling futures and delivering on the contracts sold. When this is the case the owners of the cotton are notified of the opportunity and if they agree the transaction is made. This practice prevails only in the case of larger consignors, since future contracts are for about 50,000 pounds of cotton in about 100 bales. Moreover, the information obtained indicates that this practice is used only in the case of those shippers whom the factor knows to be favorably disposed to future trading. In other words, the factor will not suggest this method of selling cotton to a shipper who is opposed to future trading, or to those owning but a few bales of cotton.

Their are times also when some factors advise their customers to sell their spot cotton in order to take advantage of a "high basis" or a temporary premium for a particular quality.[2] If the customers not opposed to future trading believe the general level of cotton prices is going higher they are sometimes advised to sell their spot cotton and buy futures. In this way the shippers can take advantage of the high basis or premium and also retain a speculative

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[1] Circular 440, Rules and By-Laws, Minneapolis Chamber of Commerce, revised to 1922, p. 84.

[2] The following letter from a factor to one of his country shippers illustrates such a condition:

JULY 16, 1924.

DEAR SIR: The cotton market at this time is being held up by the squeeze now existing in the July option. When this expires on the 25th of this month, it is likely that the basis for spot cotton will break to at least a moderate price over the October contract if not below this option.

You have on hand with us spot cotton that we can sell on the present market at a basis which is about 400 points on October for middling. It is, of course, not possible for us to tell what the market is going to do, but we believe that the price of spot cotton is going to decline to somewhere around the October contract price when July goes out. If this should be the case you can see that by selling your white cotton now you can effect a saving of at least the difference in the basis.

We are not urging you to sell and will hold your lot on storage as long as you wish, but we feel it is our duty to inform you of the situation as we see it and let you judge for yourself.

Crop reports from the belt as a whole are very promising and it looks like we are going to have a much larger crop than last year's.

Please let us hear from you in regard to the cotton on hand if you are considering selling, for there are only a few more days before the July option expires.

interest in the market which will result in a profit if the increase in cotton prices occurs.

The majority of factors, however, as indicated above, do not favor or encourage dealing in futures on the part of or on behalf of their customers. Some concerns go so far as to refuse to handle any future transactions whatsoever for their customers.

Failure to remit to consignees full price obtained.—Factors when handling cotton on consignment are acting, of course, as agents for the consignees. As such it is their obligation and duty to obtain the best possible prices for their customers, as well as to render efficiently all other services. When a sale is made the shipper should receive the full price obtained by the factor less the legitimate expenses incurred.

Only one factor was encountered who admitted that he did not always remit the full sales prices (less expenses) to his shippers. As already stated, country shippers at times order their cotton sold at a specified price; for example, the order might be given to "sell my cotton at 25 cents." The firm in question upon receipt of the instructions to sell at a specified price has offered the cotton for sale and if a higher price was obtained has remitted to the shipper only the specified price less the usual charges, retaining the difference for itself. This it appears has been the usual practice of this concern. When questioned in regard to this policy, officers of the firm maintained that such a course of action was entirely proper since the shipper had specified the price he would be satisfied with and had received it. The excess was a "merchandising profit" which properly belonged to the factor. It is unnecessary to state that the customers of this firm were not aware of this practice.

While only one factor was found who frankly stated that he withheld from the shipper a part of the sales price, occasional reports were received that other factors have also pursued this policy. The commission's agents, however, were unable to locate any other of these firms that are still in the business.

Legally and morally the duty of the factor, as stated before, is to obtain for his shippers the best prices possible and shippers are entitled to any amount that the factor obtains above the price limits. The only advantage the factor is entitled to when such sales are made is the reputation he may obtain by returning prices better than the shipper asked or expected.

Selling cotton without instructions.—In certain cases it is known that factors have sold cotton consigned to them before the shipper ordered it sold, this being presumably done in the belief that the prices at the time of the sale were higher than they would be subsequently, when the shipper elected to sell.

In the event that the factor has forecasted the movement of prices, if he sells before ordered, in a declining market, he will obviously profit to the extent of the price difference. If he chooses to hedge the cotton sold in the future market, moreover, he would largely avoid the chance of loss in the event that he is incorrect in his judgment as to the course of prices. Regardless of possible profits from the differences in prices in an event of a decline, the factor would receive payment for storage and insurance on the cotton from the time it was actually sold till the date it was ordered sold, although the

cotton was not in store nor insured during that time. A further advantage to the factor lies in the fact that he has the use of the money obtained from the sale for the same period.

Early in 1921 a country shipper consigned four bales of cotton to a Savannah factor, with definite instructions to hold. A few months later two advances were drawn by the shipper, totaling $110, or less than half the value of the cotton. In December, 1921, the shipper, when cotton was about 19 cents per pound, instructed the factor to sell the four bales at 20 cents per pound. About January 18, 1922, this firm failed, and the shipper of the four bales received an account sales showing the four bales to have been sold at 16 to 17 cents per pound. Storage at 75 cents per bale per month was charged from the date the cotton was received to the date of the account sales. No check for the balance due accompanied the account sales, and the shipper has never received any payment for the four bales beyond the $110 drawn in advance.

When this factor's case was tried, it developed in the course of the trial that these four bales had actually been sold in June, 1921, at about 10 cents per pound. The shipper in question could not recover his four bales, for there was no way of finding out to whom it had been sold, and in all probability it had been spun by the time the factor failed.

Rumors that "some factors" continue to abuse the relationship of agent in the case of cotton consigned to them were heard in several markets. One such rumor was given currency in a pamphlet, from which the following statement is quoted:

> In the cotton trade there are instances where shippers' cotton has been ordered "hold for further instructions," but instead has been sold and "hedged" in the future market; the shippers paying for storage, interest, and charges that were neither earned nor due, and whatever extra profits were made by such transactions went into the pocket of the cotton man. That might be properly termed "bucket-shop" cotton business.

The author of the pamphlet referred to above, when asked to substantiate specifically these criticisms, admitted they were based on rumors and report.

Borrowing on shippers' cotton in excess of advances.—Undoubtedly the loose way in which cotton collateral has been handled in the South has afforded opportunity for abuses and even frauds on the part of factors. The majority of factors do not have sufficient capital of their own to carry on their businesses and consequently must borrow from some source. During the heavy marketing season they require large loans to finance consignments. This is particularly true when shippers are inclined to hold their cotton for higher prices. The funds necessary to carry this cotton are obtained in several ways. A few factorage concerns are subsidiaries of cotton-buying firms and obtain their funds from the parent organization. Others are financed by a wealthy member of the firm. The majority, however, are largely dependent upon the banks. Practically all factors have a line of credit with some bank or banks, the extent of which is governed by the usual standards. If the factor depends upon assistance from some wealthy member of the firm this line is usually based on the guaranty of the firm's paper by such individual member. Most factors, however, make use of warehouse receipts covering consigned cotton when borrowing beyond the limit of their unsecured line of credit.

When consigned cotton is received by the consignee, warehouse receipts are issued in his name, regardless of whether or no an advance has been made to the consignor. These warehouse receipts are then available as collateral for loans. The consignee should not, of course, borrow more on a receipt than he has advanced on the cotton which the receipt covers because by so doing he is placing against that cotton for the purpose of financing his own business a lien over and above what is justified by his advance to the shipper and because in the event of his failure he may involve the shipper in loss. There is little to prevent a dishonest dealer from borrowing more, though in a few localities measures have been taken which apparently have tended to make this more difficult. In many cases, of course, the banks will not lend a factor as much as he has advanced since the factor may have allowed the shipper to draw a larger amount than the bank is willing to loan on the basis of the receipts.

Advances on short-weight bales and low-grade cotton.—In addition to the above there is a serious risk of loss in making loans on the type of warehouse receipts used in a few markets. These warehouse receipts are known as "various receipts." That is, receipts which are issued for a specified number of bales of cotton but without any designation either of grades or weights. Such a receipt when presented to a banker does not give him any information beyond the number of bales and possibly the marks or brands, this last being of no practical importance from his standpoint. Warehouse receipts such as these have been used to defraud creditors on a number of occasions. The receipt might cover cotton of the poorest quality and yet the borrower could easily represent it as of a higher quality and secure a loan amounting to much more than the value of the collateral. The bales covered by the receipt might be short in weight, that is, considerably less than 500 pounds each, and yet a loan be obtained on the basis of approximately 500 pounds to the bale. During the severe decline in cotton prices in 1920–21, one or two concerns bought cotton known as bollies or snaps and pledged the receipts on the basis of good cotton. In at least one case receipts covering bales of low-grade cotton weighing but 250 to 300 pounds per bale were pledged for loans on the basis of 500 pounds per bale of good quality cotton.

Loans to consignees and merchants on their own warehouse receipts.—In most of the larger spot-cotton markets such as Norfolk, Savannah, and New Orleans, there are warehouses and compresses which are not closely owned or controlled by cotton merchants, or factors. In Savannah, for example, the stock in the warehouse is owned by practically all the cotton dealers of that market. The New Orleans public warehouse is used extensively by the cotton merchants trading in that market.

In addition to warehouses of these types there are many cotton warehouses and compresses in the cotton belt owned and controlled by individuals who are also merchants or factors. This is, of course, a natural development. These concerns usually handle a large volume of business and the advantages from owning the warehouses and compresses through which they move their cotton are important. Aside from any revenue from the operation of these plants in handling cotton for the account of others, preferred service is obtained, which is of great importance during the rush season.

The value of cotton warehouse receipts as collateral is affected by the ownership of the issuing warehouse. Control of warehouses by factors and merchants merely accentuates the possibility of abuses by increasing the opportunity for manipulation of receipts.

In the first place, receipts which do not represent any cotton whatsoever could be, and at times have been, issued. If the receipts used call for the grade and weight per bale then either or both of these items may be misstated. Receipts which have been honestly issued and pledged as collateral may be obtained from the lender when the cotton is sold and after the sale the receipts may be used again as collateral at another bank and not canceled as they should be.[3]

The comparatively recent failure of one of the largest cotton factors in the South Atlantic States gave prominence to the possibilities of abuses where warehouse ownership and control is combined with the conduct of the cotton business. In this case it is alleged, among other things, that the factor in question issued or ordered to be issued receipts for large quantities of cotton when there was no such cotton in store.

Bankers do not care to lend to factors or dealers on their own receipts but feel that they must do so. A banker in Atlanta stated that he would like to have the Federal Reserve Bank of Atlanta, of which his bank was a member, rule that member banks must not lend to cotton merchants using their own receipts as collateral. This, he said, would relieve him of the responsibility for turning down such business which he felt he could not do now. This attitude was quite general among bankers.

Repledging pledged receipts.—A cotton merchant who has pledged warehouse or compress receipts with a bank as collateral must have these receipts if he is to move the cotton which they cover, or any part of it. He can not load the cotton on steamer or cars until he presents the receipts to the compress or warehouseman. He can not obtain payment for the cotton until he has the bill of lading. To enable the merchant to move his goods the bank must release the collateral and for the purpose of safeguarding the bank the merchant signs a trust receipt which the bank retains in place of the warehouse or compress receipts. An unscrupulous merchant might then pledge the receipts elsewhere, or sell the cotton and not take up the trust receipt. The length of time creditors are permitted by banks to retain the collateral covered by trust receipts varies. In New Orleans, for example, such collateral may be held by the borrower as long as 30 days. In Houston, however, it must be returned to the bank each day. The New Orleans banks insure their trust receipts against illegal use of the collateral which they cover.

Section 4. Measures Taken to Prevent Abuses.

Ways of improving conditions.—While some steps have been taken in the Cotton Belt by way of preventing certain of the alleged abuses outlined, most of these measures appear to have been taken by the

[3] Up to a few years ago some compresses filled out receipts with pencils. If only a part of the cotton called for by a receipt was sold the receipt was altered by erasing or crossing out the original number of bales and inserting the remainder. In this way a receipt might, and frequently did, become so badly worn that the number of bales for which it finally called could be determined only with difficulty. When the receipt became almost illegible it was destroyed and a new one issued. This practice obtained in Houston, Tex., until 1923 when a cotton factor of that place was found to have raised a receipt for 3 bales to over 1,500 bales. When this was discovered the practice of changing receipts was stopped chiefly because of the demands of the banks for a safer system of issuing receipts.

banks for their own protection. Prompt legal action by claimants to enforce their rights as well as swift and severe prosecution of offenders where violations of law occur would doubtless do something to correct the situation [4] while more stringent rules and regulations for the handling of the cotton business and the borrowing of funds would probably both do much to effect improvements in the situation. Unwillingness to prosecute offenders combined with the fear of a loss of business, however, militate against any very complete adoption of such measures.

Cotton merchants do not as a general rule care to take their differences into court. There are several reasons for this attitude. In the first place it would be expensive and there would be little or no assurance of securing any return since it seems that when cotton merchants fail, they do so quite thoroughly and little is left for the creditors. Secondly, the personal relations between the two parties frequently are such that the creditor would be in the position of taking action against a friend and few, apparently, care to do that, particularly in cases that might result in criminal action.

While the banks are much less reluctant to bring suits, bankers do not care as a rule to admit that they have been the victims of misplaced confidence. As one prominent banker expressd it, "they (the bankers) dread being made the laughing stock of their competitors—they don't want people to know that they were such fools as to be stung the way they were." The commission found this attitude quite common among the bankers. Both the banks and others fear the loss of good customers and this affects not only their willingness to take legal proceedings but also their enforcement of rules and regulations designed to improve conditions.

Loans on consignments not to exceed advances.—In the Atlantic States, particularly Georgia, where failures among cotton factors in recent years have been more numerous than in other sections of the Cotton Belt, factors are supposed to sign a statement, when applying to the bank for loans, to the effect that the amount borrowed does not exceed the amount advanced on the cotton pledged as security. This statement, however, is rarely asked for by the banks who fear that to do so would offend their customers.

Savannah and Augusta banks, however, have adopted a more effective way of preventing factors from borrowing more on warehouse receipts than has been advanced to the shipper or owner of the cotton covered by the warehouse receipts. These banks require the factors to present notes signed by the owner of the cotton for the amount he has drawn. The banks will then lend the factor not to exceed this amount. While this requirement is made in an attempt to safeguard the banks, it is obvious that it at the same time protects the interest of the shipper. When the factors were first required to obtain these notes they were rather bitter. It was claimed that it would be impossible to secure such notes, particularly in cases where the advance was made on cotton in transit which was to be sold on arrival. Country shippers, it was said, would refuse to sign these notes on the ground that the factor had the cotton and that this was sufficient

[4] In this connection, it is of interest to note that despite numerous charges of very serious irregularities, if not frauds, in connection with a recent notorious failure, no criminal action has been taken against the head of the organization, though the opinion quite generally held by the cotton trade is that there should have been vigorous prosecution.

security. One of the chief causes for complaint was that some factors were so strong financially that they did not borrow on warehouse receipts, and, consequently, would not require notes. This, it was contended, would result in these few firms securing all, or nearly all, the consignment business. In addition, many factors looked upon the requirement as insulting.

It appears, however, that in so far as the Augusta market is concerned, the fears of the factors were not borne out. After one season under the new plan most of the factors in that market who were required to obtain notes from their shippers stated that they believed the requirement wise, and that it had not injured their business. While it had required some educational work among the country shippers, but very few customers had been lost.

Specification of grade and weight.—Many warehouses in the South now issue single bale receipts and in spite of claims to the contrary those using the single bale receipts are very much pleased with the system. For the single bale warehouse receipt it may be claimed that it aids in the prevention of frauds and irregularities in that it is absolutely impossible to raise such a receipt. In some markets warehouses issuing block receipts now state on the receipt the approximate grade or weight, or both, for each bale received.

Methods employed to safeguard receipts.—A number of different methods are found to have been employed in recent years for the purpose of safeguarding receipts and preventing fraud. At least one important warehouse company has a bonding company guarantee its receipts; that is, the bonding house guarantees that each receipt is supported by the number of bales of cotton described thereon. In a few markets the local bankers have named one of their number to act as custodian for the local warehouses. This custodian signs all receipts and inspects the warehouses at frequent intervals.

The Federal reserve bank for the Atlantic district checks each warehouse in that district upon whose receipts member banks make loans. This inspection will be made upon the request of any member bank and includes an actual count of each bale in the warehouse. Banks in this district believe this inspection to be most desirable.

It is interesting to note the difference of opinion between the banks on inspection of warehouses. A number of banks said they had never felt it necessary to inspect the warehouses of their customers though they had the right to do so. Other banks which did make such inspection stated that they believed it a necessary and valuable safeguard.

Section 5. Divisions of Legal Discussion.

Introductory.—The facts developed, in response to the resolution of the Senate, have been presented in the preceding sections of the report. The following sections will advert to the questions of law which might arise in the course of dealing above described, and will cite pertinent statutory provisions, together with judicial decisions interpreting certain provisions, in the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. Some general provisions of the Virginia Code likewise will be summarized, because of the importance of the city of Norfolk as a warehousing and transshipment point.

Before proceeding to a study of specific statutes, it is pertinent to state that the negotiable instruments law has been adopted, without

substantial reservation, in all of the States listed. The uniform sales act is in force in Tennessee. The uniform warehouse receipts act has been adopted in seven of the cotton States, namely, Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, and Tennessee. It is also in force in Virginia.

The discussion of the State laws is divided as follows:

Some duties of the cotton factor.
Advances to planters secured by cotton controlled by factors.
Trading in consigned cotton and the question of title.
Warehouse receipts—The uniform warehouse receipts act.
The cotton States commission.
Licensing of cotton factors and general regulatory statutes.

Section 6. General Duties of the Cotton Factor.

Alabama.—Commission merchants and factors, disposing of property for others, must pay moneys due upon demand of the consignor, and failure to do so within three days after demand is deemed a misdemeanor, subject to imprisonment at hard labor for not more than six months or a fine of not more than $1,000. (Sec. 3976, Crim. Code.) Dealers in farm produce who directly or indirectly purchase goods for their own account, which have been received on consignment, without prior authority, are misdemeanants and may be fined a sum not exceeding $500. (Sec. 4027, Crim. Code.) Factors and commission merchants selling the property of the planter, who take or receive from the purchaser, directly or indirectly, a rebate, discount, or return commission, or charge their principal for services incidental to handling the cotton more than actually paid, are punishable as if they had stolen the moneys or goods. (Sec. 5418, Crim. Code.)

Persons who fraudulently convert or embezzle property to their own use, or to the use of another, or secrete fraudulently with intent to convert to their own use, or to the use of another, money or property which has come into their possession by virtue of their office or employment, are punishable upon conviction as if they had stolen it.[5] (Sec. 3960, Crim. Code.)

Arkansas.—The warehouseman must keep goods of each depositor separate from those of other depositors, so as to permit of their identification, but fungible goods may be mixed with other goods of the same kind and grade. In the case of fungible goods, each depositor shall be entitled to such portion thereof as the amount deposited bears a relation to the whole. (Secs. 10366–10367, Code.)

Georgia.—The agent must not make a personal profit from his principal's property; for all such he is bound to account.[6] (Sec. 3583 of Civil Code.) When the agent deposits money in his own name, his principal may follow it and recover it, wherever found, unless the rights of innocent third parties have intervened.[7] (Sec. 3577, Civil Code.)

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[5] A bailee with a special interest in property may embezzle it. (129 Ala. 80, 30 So. 582.) The body of the crime may consist of many acts done by virtue of confidential relations. (134 Ala. 429, 33 So. 226.) Proof that the defendant procured a cotton receipt to be issued in his son's name, which he afterwards delivered to the owner, will not support conviction. (88 Ala. 105, 7 So. 50.)

[6] 60 S. E. 283.

[7] A factor into whose hands cotton passes which has been sold for cash but has not been paid for, is chargeable with the conversion of the same though he disposes of it at the instance of the buyer and it be sold in due course of trade and in entire good faith and without notice of retention of title by the seller. (Flannery *v.* Harley, 117 Ga. 483; 43 S. E. 765.)

Louisiana.—Persons engaged in the commission or brokerage business are under duty to render true and accurate statements to their principals. Those who render false statements or accounts of sales of cotton, or who falsely represent that such cotton is being held for future sale when in fact the cotton has been sold and only a sample retained, are guilty of unlawful practices. (Sec. 1, Act 242 of 1910, p. 406, Stats. of La.)

Factors or commission merchants who sell cotton received on consignment without rendering to the consignor within 10 days after delivery a complete account of sale, showing the grade, price received, name of purchaser and his post-office address, are guilty of a felony and upon conviction may be fined a sum of not less than $100 nor more than $1,000, and imprisoned not less than 30 days nor more than 6 months, at the discretion of the court. (Secs. 2 and 3, Act 242 of 1910.)

Commission merchants and brokers storing or shipping goods for or on account of another party, and negotiating, pledging or hypothecating the cotton press receipt or bill of lading received for such goods, and not accounting or paying over to their principal or the owner of the property the amount so received for such negotiation, pledge or hypothecation shall be deemed guilty of fraud and may be punished by heavy fine or penitentiary imprisonment, or both. (R. S., sec. 824, Stats. of La.).

Mississippi.—Factors owe loyalty to their principal, and if a factor fraudulently secretes, embezzles or converts to his own use goods or money, entrusted to his possession by virtue of his calling, he shall be deemed guilty of a crime punishable by imprisonment for not more than 10 years or by a fine of not more than $1,000, or both. (Sec. 864, Code.) Persons fraudulently appropriating personal property or money which has been delivered to them on deposit, where they were bound to deliver or return the thing received or proceeds from its sale, are deemed guilty of a crime and on conviction may be imprisoned for not more than 10 years. (Sec. 867, Code.)

North Carolina.—Agents or consignees who fraudulently or knowingly and willingly convert to their own use, or make away with, or secrete, with a fraudulent intent, money, goods or chattels entrusted to them, are guilty of a felony, and may be punished as in cases of larceny. (Sec. 4268, Consolidated Stats.)

Oklahoma.—A bailee must deliver the thing to the person for whose benefit it was deposited, on demand, whether the bailment was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner of the thing, or by the act of the law, and has given notice to the person for whose benefit the bailment was made, of any proceedings taken adversely to his interest in the thing bailed which may tend to excuse the bailee from delivering the thing to him. (Secs. 5187, 5190, Compiled Stats.)

The detriment caused by wrongful conversion of personal property is presumed to be the value of the property at the time of the conversion, with interest from that time; or, when suit has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and a fair

compensation for the time and money properly expended in pursuit of the property.[8] (Sec. 5999, Compiled Stats.)

A person having a lien on personal property can not recover greater damages for its conversion, from one having a right thereto superior to his after the lien is discharged, than the amount secured by the lien, and the compensation for loss of time and expenses. (Sec. 6001, Compiled Stats.)

Persons intrusted with property, as bailee, or with power of attorney for the sale of the property, who fraudulently convert the same or the proceeds thereof to their own use or secrete the property or the proceeds from the sale of the property, with a fraudulent intent to covert to their own use, are guilty of embezzlement.[9] (Sec. 2125, Compiled Stats. 1921.) A distinct act of taking is not necessary to constitute embezzlement, but includes fraudulent appropriation, conversion or use of the property. (Sec. 2127, Compiled Stats.) Any evidence of debt, negotiable by delivery only, and actually executed, is likewise the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not. (Sec. 2128, Compiled Stats.) Persons guilty of embezzlement are punishable as if they had feloniously stolen property of the value of that embezzled, and where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured, to be paid by it shall be taken as its value. (Sec. 2132, Compiled Stats.)

Persons who sell, hypothecate or pledge merchandise for a bill of lading, receipt or voucher, without the consent in writing of the person holding such bill, receipt or voucher, are punishable by imprisonment in the penitentiary for a term not exceeding five years or by a fine not exceeding $1,000, or by both. (Sec. 2174, Compiled Stats.)

Persons who with intent to defraud use a false balance, weight or measure in the weighing or measuring of commodities to be purchased, sold, or pledged are punishable by a fine not exceeding $100, or by imprisonment in the county jail for not more than 30 days, or by both. They are likewise liable to the injured party in double the amount of damages. (Sec. 2196, Compiled Stats.)

South Carolina.—Factors or commission merchants who receive cotton from planters and sell the same, failing to pay over the net proceeds to the planter on demand, or apply the same to their own use and benefit, are deemed guilty of fraud, and are subject to imprisonment of not less than one nor more than five years. (Sec. 178, Criminal Code.)

Tennessee.—The first duty of the factor is to obey instructions; and if he has none, he may act upon his own sound discretion, according to the usages of the trade, as may seem best for his principal.[10] (Sec. 3558, par. 25.)

Factors can not, for their own debts, pledge the goods of their principal. Trover will lie against a factor so pledging the goods of his principal, and against the pledgee who has sold the goods without knowledge of the character in which they were held by the factor and pledgor. But a factor may pledge goods on which he has made

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[8] Applied Seibert *v.* Bank of Okeene (25 Ok. 778, 108 Pac. 628).

[9] Bodkin *v.* State, 16 Ok. Cr. 610, 185 Pac. 835; Cultured People *v.* Murphy, 51 Cal. 376. People *v.* Doane, 20 Pac. 84.

[10] A factor who has made advances on goods is not bound to obey instructions to sell, given after the consignment and after the advancements, unless the goods will bring the amount advanced. (Blair *v.* Childs, 10 Heis. 199.)

advances, to the extent of his interest, if he retains the power to control the sale of the goods.[11] (Sec. 3558, pars. 11 and 12.)

A fraudulent appropriation of property by any person to whose charge or care it is delivered, subject to the immediate orders of the owner, or to the use of it in his presence, or for the purpose of his trade, is larceny.[12] (Sec. 6544.) A fraudulent breach of trust is a criminal offense, punishable by a term of imprisonment not to exceed 10 years. The fraudulent appropriation of personal property, delivered on deposit or by pledge to a factor, is a fraudulent breach of trust.[13] (Secs. 6579, 6580, Code.)

Texas.—Factors or commission merchants to whom cotton is consigned for sale on commission or otherwise are prohibited from purchasing or reserving any interest whatever therein, either directly or indirectly, in their own name, or in the name or through the instrumentality of others, for their own benefit or for the benefit of others, without express authority in writing from the owner or consignor of the cotton, or some person authorized by him, under penalty of forfeiture of one-half the value of the cotton, recoverable by the owner of the same by suit in any court of competent jurisdiction in the county where the sale took place or where the offending party resides. (Art. 3829, Civil Stats.)

Factors or commission merchants who fraudulently misapply or convert to their own use money, goods, or other property which shall have come into their possession by virtue of their office, agency, or employment, are punishable in the same manner as if they had committed a theft of such money, goods, or property. (Art. 1417, Penal Stats.)

Virginia.—Every commission merchant shall, upon receipt of farm produce and as he handles and disposes of the same, make a record thereof, specifying the name and address of the consignor, the date of receipt, the kind and quantity of such produce, the amount of goods sold, the selling price thereof, and the items of expense incurred therewith, and this record, together with payment in settlement for said shipment, shall be mailed to the consignor within five days after the sale of such consignment shall have been completed, unless otherwise agreed upon in writing between the parties. Names and addresses of purchasers shall be furnished by the consignee to consignor, when demanded in case of complaints. (Sec. 1263, General Laws.) Commission merchants violating the provisions which would cause their certificate of license to be revoked are deemed guilty of a misdemeanor. (Sec. 1264, General Laws.) Embezzling property stored with brokers or commission merchants, by virtue of their employment, by such brokers or merchants, is the equivalent of larceny, and punishable as such. (Sec. 4451, General Laws.) And the sale or pledge of goods belonging to another, and failing to pay over the proceeds from such sale or pledge, is larceny. (Sec. 4453, General Laws.)

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[11] Bank *v.* Trenholm, 12 Heis, 520; McDaniel *v.* Adams, 3 Pickle 758; Blair *v.* Childs, 10 Heis. 199.

[12] Where delivery of chattels is made for a certain, special and particular purpose, legal possession remains in the first proprietor. The person to whom the goods are delivered has only the bare charge or custody of them, and may commit larceny by a fraudulent conversion to his own use. (Wilson *v.* State, 1 Port. 118.)

[13] Failure and refusal to deliver or return the thing received, or its proceeds, is embezzlement. (State *v.* Leonard, 6 Cold. 309.)

Section 7. Advances to Planters Secured by Cotton in Hands of Factors.

Alabama.—Collateral securities taken, or property pledged to secure the payment of a debt, must not, without a transfer of the debt, be transferred or assigned otherwise than provided for by statute. A transfer of the debt passes to the transferee the right of the transferror in such collateral security or property pledged. A transfer or assignment of such security or property pledged, not accompanied by a transfer of the debt, is a discharge of the hypothecation or pledge, restoring the right and title of the person from whom it is received. (Sec. 6744, Civil Code.) Removing, selling, or buying property, for the purpose of defrauding those who have a lien for rents or advances, is punishable as if the property were stolen.[14] (Sec. 4925, Crim. Code.) Persons taking or receiving cotton on which there is a lieu for rent or advances, or both, or the proceeds thereof, and who fail to apply the same to the payment of the rent, or the discharge of the lien, whether the same is in the hands of a third party or not, are to be punished as if they had stolen the same. (Sec. 4025, Crim. Code.)

Arkansas.—In the absence of stipulations to the contrary, the mortgagee of personal property shall have the legal title thereto and the right of possession. (Sec. 7393, Code.)

Georgia.—The agent must act within the apparent scope of his authority, but in cases where the power of agency is coupled with an interest in the agent, unreasonable instructions detrimental to the agent's interest, may be disregarded. Where a consignment is made to a factor and he makes advances thereon with the consent of or by direction of his principal, the agency is said to be coupled with an interest. (Sec. 3576, Civil Code.) A factor's lien extends to all balances on general account, and attaches to the proceeds from the sale of goods consigned, as well as to the goods themselves. Peculiar confidence being reposed in the factor, he may, in the absence of instructions, exercise his discretion according to the general usage of the trade; in return, greater and more skilful diligence is required of him and the most active good faith.[15] (Sec. 3502, Civil Code.)

Louisiana.—Parties who borrow money on the faith of warehouse receipts, representing property in store, must file their affidavits with the pledge that such property is theirs, the pledgor's personal property, or the property of some party for whom the pledgor is acting as agent, factor, commission merchant or in some other fiduciary capacity, and that said party is truly indebted to the pledgor in an amount equal in value to the value of the property pledged, as specified in the warehouse receipt. Any deviation from this practice renders the party or parties so deviating liable for the value of the property or any excess in value over and above the amount for which it may have been pledged, in any manner specified by statute, and to

[14] Removal with knowledge of lien, may raise presumption of intent to defraud. (115 Ala. 14, 22 So. 611.

[15] When a cotton factor has advanced large sums of money, so that his interest in the cotton equals or exceeds that of the owner, he may exercise his discretion as to the time of selling the cotton, even to the disregard of all of the owner's instructions, provided he acts with due regard to his own interest and that of the owner. (13 Ga. App. 425, 426; 79 S. E. 912.)

Where factors have made advances, they are not bound to hold goods, if the customer fails to deposit the margins required. (17 Ga. App. 57.) But even though the factor's agency be coupled with an interest, if there should be an express contract whereby goods are to be held until sale is authorized, the factor is bound by the terms of the agreement as actually made, and is liable to the owner for damages sustained by an unauthorized sale. (22 App. 455, 96 S. E. 347.)

prosecution for perjury and also for obtaining money under false pretenses. However, the failure or omission of the borrower or pledgor to make, or the pledgee to require the affidavit mentioned, in no manner affects the validity of the pledge of the receipt, in all cases where the pledgor, at the time of making the pledge, was the owner of the property mentioned in the receipt, or in any case where the pledgor had at the time the pledge was made, any lien or privilege of any kind on the property mentioned in the receipt. The intent of this latter provision is that the pledge of the receipt shall in all cases, notwithstanding the absence of the affidavit, be valid to the extent of the interest or title which the pledgor had in, on or to the property at the time the pledge was given. (Act 72 of 1876 as amended by Act 176 of 1902, p. 329, Stats. of La.)

Any consignee or commission agent who has made advances on goods consigned to him, or placed in his hands to be sold for account of the consignor, has a privilege for the amount of these advances with interest and charges on the value of the goods, if they are at his disposal in his stores or a public warehouse, or if, before their arrival, he can show by a bill of lading or letter of advice that they have been dispatched to him.[16] This privilege extends to the unpaid price of the goods which the consignee or agent shall have thus received and sold (Sec. 3247, Revised Civil Code.)

Mississippi.—A factor who sells property which he had obligated himself to sell, or which he had mortgaged or in any manner encumbered, or on which he knows there is a lien of any kind, without informing the person to whom he sells the property of the exact state of the property as affected by any acts of his, or of the lien or encumbrance thereon, shall be punished as if he had obtained the goods under false pretenses.[17] (Sec. 895, Code.)

North Carolina.—Persons removing, exchanging, or secreting personal property on which a lien exists, with the intention of preventing or hindering the enforcement of the lien, are guilty of a misdemeanor. (Sec. 4288, Consolidated Stats.)

Oklahoma.—Persons having an interest in property subject to a lien have a right to redeem it from the lien at any time after the claim is due and before their right of redemption is foreclosed. (Sec. 7419, Compiled Stats.)

The sale of property on which there is a lien is satisfaction of the claim thereby secured, or, in case of personal property, its wrongful conversion by the person holding the lien extinguishes the lien thereon. (Sec. 7423, Compiled Stats.) The factor has a general lien,[18] dependent on possession, for all that is due him as such upon all articles

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[16] One who makes advances to another who in turn makes advances to the farmer or planter, has no right of pledge on the crops grown by the farmer, although the first party took from the other a contract and recorded it according to law. (Adler & Co. *v.* Haas, 134 L. 622.)

Commission merchants, who agree with one who has shipped them cotton, pledged to them for advances, to hold for a favorable market, do not thereby waive "the substantial rights by which their advances were secured." (Dreyfuss *v.* S. Gumble & Co., 123 La. 344.)

The statutory pledge in favor of merchants and factors on shipments consigned to them, with the right of sale and appropriation of the proceeds to the account due consignees, is not affected by a respite granted to the consignor by a majority vote of his creditors. (Ott *v.* His Creditors, etc., 127 La. 827.)

[17] The absence of any intent to defraud would not avail as a defense, and it is therefore unnecessary to allege a fraudulent or felonious intent. (State *v.* Mitchell, 109 Miss. 91, 67 So. 853.)

[18] A factor is one who receives and sells property on commission, and property must be in his possession. (Bank *v.* Frick Co., 13 Ok. 179, 73 Pac. 949.) A factor has no lien upon property the possession of which he acquired by wrongful methods. (Id.)

Where a mortgaged property has been removed from the county in which it was situated at the time of execution of mortgage, the mortgagee, independent of any provision of mortgage, is entitled to possession of property mortgaged; and being so entitled to immediate possession, action for conversion will lie against a subsequent purchaser who wrongfully removes it from the county. (Bank *v.* Gaskill, 44 Ok. 728, 145 Pac. 1131.) The mortgagee has no right to possession but only a lien. (Hickson *v.* Hubbell, 4 Ok. 224, 44 Pac 222.)

of commercial value that are intrusted to him by the same principal. (Sec. 7433, Compiled Stats.)

The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder. One who has a lien upon property may pledge it to the extent of his lien. (Secs. 8188 and 8190, Compiled Stats.) Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found. (Sec. 8200, Compiled Stats.)

South Carolina.—It is a misdemeanor for cotton factors or warehousemen to dispose of cotton by selling, loaning, pledging, or otherwise, without the consent or approval of the owner of such cotton. Conviction of this practice is punishable by a fine of not more than $500 or imprisonment for not more than one year. The statute, however, reserves the rights of persons holding mortgages over cotton and provides that such mortgages shall not be abridged or affected by the statutes; also that the rights of persons who have advanced or loaned money, or might thereafter advance or lend money on such cotton, shall not be abridged or affected. The warehouseman's claim for storage is likewise not within the contemplation of the statute. (Sec. 98, Criminal Code.)

Persons who wilfully and knowingly sell and convey personal property on which a lien exists without first giving notice of such lien to the purchaser of such property, are guilty of misdemeanor. (Sec. 171, Criminal Code.)

Tennessee.—A factor has a lien upon the produce consigned to him for advances made thereon, but not for a debt previously owing.[19] (Sec. 3558, Note 5.) But where the consignor remains the owner of the goods consigned, no special or general lien thereon can exist in the factor, unless he obtains possession, either actual or constructive, of the goods. Possession of the bill of lading is not constructive possession. If the goods are in transit, or the factor has only a right of possession, the lien does not attach.[20] (Sec. 3558, Note 7.) A factor may pledge goods on which he has made advances, to the extent of his interest, if he retains the power to control the sale of the goods.[21] (Sec. 3558, Note 12.)

The true owner of cotton deposited may demand the return of it, upon the payment of moneys advanced by the factor, or on restoration of the security given on the deposit of the cotton. (Sec. 3608a, 115, Code.)

Texas.—Where a negotiable receipt has been issued for goods, the seller's lien or right of stoppage in transit is not sufficient to defeat the rights of purchasers for value in good faith to whom the receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued the receipt, of the seller's claim to a lien or right of stoppage in transit. The warehouseman is not obliged to deliver nor is he justified in delivering the

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[19] Owen *v.* Iglanor, 4 Cold. 15.

[20] The constructive possession that gives a factor a lien for advances made and liabilities incurred, is the possession of his servants, or agents, in the proper discharge of their duty. (Woodruff *v.* Railroad, 2 Head 94; Oliver *v.* Moore, 12 Heis. 486.) For further construction of this section see also Saunders *v.* Bartlett, 12 Heis. 316; Bank *v.* Hays, 11 Cates 739.

[21] Blair *v.* Childs, 10 Heis. 199.

goods to an unpaid seller unless the receipt is first surrendered for cancellation. (Art. 7827, Texas Civil Statutes.)

Persons making false statements concerning liens, mortgages, encumbrances or an indebtedness of any nature against cotton, or who in any particular conceal the existence of liens, mortgages, encumbrances, or indebtedness of any kind that may exist against such cotton, or who fail truthfully to make statements provided for by the public warehouse act, are deemed guilty of a felony, punishable by a fine of $1,000 or imprisonment in the penitentiary for a year, or by both. (Art. 971e, Texas Penal Statutes.)

Virginia.—The reservation of title to, or lien on, goods and chattels sold, is void as to creditors, and purchasers for value, unless in writing and docketed. (Sec. 5189, Gen. Laws.)

Section 8. Trading in Consigned Cotton and the Question of Title.

Alabama.—Persons depositing goods to which they have no title, or upon which there is a lien or mortgage, taking for such goods a negotiable receipt, which they afterwards negotiate for value with the intention of deceiving, and without disclosing their want of title, or the existence of the lien or mortgage, shall, on conviction, be punished as if they had stolen the same. (Sec. 5594, Crim. Code.) Any one who removes, or aids in removing from the State, cotton subject to the lien given by law for the purchase money, with intent to prevent or hinder the enforcement of such lien, may be imprisoned for not less than one or more than five years at the discretion of the jury. (Sec. 3787, Crim. Code.)

Arkansas.—The landlord's lien continues so long as the cotton is on storage in any warehouse, provided a negotiable receipt therefor has not been issued. (Sec. 10434, Code.) Persons depositing goods with a warehouseman, to which they have no title, or upon which there is a lien or mortgage, taking for the goods a negotiable receipt, which they afterwards negotiate for value with intent to defraud, without disclosing their want of title, or the existence of a lien or mortgage, are guilty of a felony, and may be punished by imprisonment not exceeding two years, or by a fine not exceeding $5,000, or both. (Sec. 10442, Ark. See also "Warehouse receipts and the uniform warehouse receipts act," infra.)

Georgia.—Cotton shall not be considered to be the property of the buyer until fully paid for, although it may be delivered to the buyer.[22] In cases where the whole or any part of the property so delivered to the buyer is lost or destroyed subsequently, the right of the seller to collect the purchase money shall not be thereby affected. This applies to sales by commission merchants on their own account as well as sales by them as representatives of planters. (Sec. 4126, Civil Code.)

Louisiana.—The vendor has a lien of five days for the payment of the purchase price of his goods, except in cases where a warehouse

[22] 8 Ga. App. 589; 70 S. E. 118; 11 Ga. App. 854–55, 75 S. E. 985, and 76 S. E. 988. The rights of the factor in respect of consigned cotton, do not amount to ownership of it. (90 U. S. 35.) The lien of the factor is not title. (48 Ga. 39.) Where payment of the buyer's checks for cotton was refused, and the plaintiff, a commission merchant was not paid for it, title to the cotton had not passed from plaintiff when the defendant bank received the bill of lading for it, with the buyer's draft on subsequent purchaser for the purchase price, which the bank collected and applied to preexisting indebtedness of the original buyer to itself. 20 Ga. App. 320, 93 S. E. 113.)

receipt has been pledged for moneys borrowed.[23] (Sec. 5, Act 176, 1902.)

Goods delivered to a carrier by the owner, or by a person whose act in conveying title to them to a purchaser for value in good faith would bind the owner, if a negotiable bill is issued for them, can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier may not be compelled to deliver possession of the goods until the bill of lading is surrendered to him or impounded by the court. (Sec. 24, Vol. II, Stats. of La. 1920.)

In the event of the insolvency of a consignee or commission agent, the consignor has not only a right to reclaim the goods sent by him and which may remain unsold in the hands of the consignee or agent, if he can prove their identity, but he has also a privilege on the price of such as have been sold if the price has not been paid by the purchaser or passed into account current between him and the bankrupt. (Sec. 3248 of La. Revised Civil Code, 1920.)

Mississippi.—Where the seller in a separate written contract reserves legal title to property as security for the price and also takes the purchaser's note, an assignment of the note carries with it as an incident the right to enforce the contract as a security. (Foundry Co. *v.* Pascagoula Ice Co., 72 Miss. 608, 18 So. 364.)

North Carolina.—Any person who obtains an advance in money from others, representing himself to be the owner of some article of produce, or of other chattels, which property, or the proceeds of which, the owner so representing agrees to apply to the discharge of the debt thus created, and the owner fails to apply the produce or other property, or the proceeds thereof, in accordance with the agreement, or disposes of them in a manner not agreed upon by the parties to the transaction, is guilty of a misdemeanor, whether he was or was not the owner of the property at the time the representation was made. (Sec. 4282, Consolidated Stats.)

Oklahoma.—Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien. (Sec. 7411, Compiled Stats.) But one who has allowed another to assume the apparent ownership of property for the purpose of making a transfer of it can not set up his own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith, in the ordinary course of business, and for value.[24] (Sec. 8191, Compiled Stats.) One who has

[23] Where the vendor has not waived his lien for the unpaid purchase price, the lien continues to exist on agricultural products of the United States sold in New Orleans, during five days from date of delivery, whether the commodity be in the hands of the purchaser or of third parties. Whether the sale was made for cash or on credit, the character of the title by which the third parties hold the commodity is immaterial; it may be by pledge, sale, or otherwise, for the ownership or possession passes to him cum onere. The original vendor's lien affects the commodity during five days from delivery by the owner to his vendee. (S. Gumbel & Co. *v.* Beer, 36 A. 484.)

In Holton & Winn *v.* Hubbard & Co. (49 A. 715) a warmly contested case, it appeared that bills of lading were delivered to a factor, who stored the commodity in a warehouse and took a receipt in his own name. The factor then pledged the receipt with a bank as collateral for a loan made by the bank. Held, the ownership of the commodity was not divested by the conduct of the factor, and the pledgee could not hold the property. One who makes advances to another who in turn makes advances to the farmer or planter has no right of pledge on the crops grown by the farmer, although the first party took from the other a contract and recorded it according to law. (Adler & Co. *v.* Haas, 134 L. 622.)

[24] (Okla. 1914.) The rule permitting a beneficiary to follow trust funds whenever they can be identified, into the hands of anyone but a bona fide purchaser for value, applies to property or the proceeds thereof held by a factor. (C. M. Keys Commission Co. *v.* Beatty, 142 P. 1102; 42 Okla. 721.)

a lien upon property may pledge it to the extent of his lien. (Sec. 8190, Compiled Stats.) [25]

A person who sells, hypothecates, or pledges merchandise for which a bill of lading, receipt or voucher has been issued by him without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the penitentiary not exceeding five years or by a fine not exceeding $1,000 or by both. (Sec. 2174, Compiled Stats.)

South Carolina.—Agreements between vendors and vendees, bailors and bailees of personal property, whereby the vendors or bailors reserve to themselves an interest in the property, are null and void as to subsequent creditors or purchasers for consideration and without notice, unless the agreements are reduced to writing and recorded in the manner provided by law for the recording of mortgages.[26] (Sec. 5519, Genl. Stats.)

Tennessee.—When factors or cotton brokers sell cotton, a special lien in behalf of the vendors upon the cotton so sold, for the purchase money agreed to be paid for it, exists for a space of five days from and after the day of sale or delivery, unless the purchase money is paid before that time. (Sec. 3557.)

The factor has a special property in the goods intrusted to him for sale and a lien on them for his factorage or commissions; and he may sell the goods in his own name.[27]

The property in goods shipped passes by the consignee's assignment of the bill of lading, and the consignor's right of stoppage in transit is thereby lost, and the charges of a factor subsequently employed by the consignor, who represented himself to be the owner, to superintend their transmission, constitutes no lien upon the goods.[28] Where a factor, to whom cotton is shipped under a contract to be held for an advance in price and sold on commission, violates the contract and assumes an unauthorized control over the cotton, and makes an unauthorized disposition of the same, the shipper or consignor is entitled, as for a conversion, to the damages sustained by reason of such unauthorized conduct.[29] If no advances have been made or liabilities incurred by the factor, the consignor of goods to the factor for sale has the right generally to control the sale. But if the factor has made advances or incurred liabilities thereon he has the right, in the absence of a restrictive contract, to sell enough of the goods to reimburse himself for advances made or meet such liabilities.[30]

Factors intrusted with the possession of a bill of lading, custom-house permit, or warehouse receipt for the delivery of cotton, and those not having the documentary evidence of title, who are intrusted with the possession of cotton for the purpose of sale or as a security for advances made or obtained thereon, are deemed the true owners of the cotton, as far as to give validity to any contract made by the factor with any other person, for the sale or disposition of the

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[25] Pledging of commercial paper as collateral security for payment of a debt does not vest pledgee with complete title. He has only a special interest therein to secure the debt. He must hold and collect same as it becomes due and apply proceeds to payment of debt secured. (Miller *v.* Horton, 69 Okla. —, 170 Pac. 509.)

[26] An agreement whereby goods are delivered on consignment and accounted for as agent is not void as against general creditors. (In re Bailey, 176 Fed. 628.)

[27] Bank *v.* Trenholm, 12 Heis 523.

[28] Curry *v.* Roulstone, 2 Ov. 110.

[29] Galbreath *v.* Epperson (3 Shannon's Cases, 273) holds that it is no defense to an action for the conversion of cotton that the factor accounted for the same at a subsequent date by reporting the same to have been sold at the fair market price when and where the account was rendered.

[30] Bell *v.* Hannah, 3 Bax. 48; Beadles *v.* Hartmus, 7 Bax. 476; Woodruff *v.* Railroad, 2 Head. 87.

whole or any part of the cotton, or for any money advanced or negotiable instrument or other obligation in writing given by such other person upon the faith thereof. (Sec. 3608a–13.)

Texas.—All reservations of the title to chattels, as security for the purchase price thereof, are chattel mortgages, and when possession is delivered to the vendee shall be void as to creditors and good-faith purchasers unless such reservations are in writing and registered as required for chattel mortgages. (Art. 5654, Texas Civil Statutes.)

Virginia.—Mortgages, deeds of trust, or other encumbrances created upon personal property located in another State are not valid encumbrances on said property after it has been removed into Virginia, as to purchasers for value without notice, unless the encumbrance in question is recorded according to the laws of Virginia, in the county of corporation in which the said property is located. (Sec. 5197, Gen. Laws.)

Whenever farm products have been consigned to a commission merchant for sale, and he has sold them and become insolvent or die before having paid over the proceeds of the sale to the consignor or the owner of the farm product, the claim of the consignor or owner, when legally proved, is a lien on the estate of the commission merchant subject only to such liens as were created on said estate and recorded prior to said insolvency or death. This, however, does not apply to consignors or owners who, without requesting payment, allow the proceeds of sale to remain with the commission merchant at interest, or who allow such proceeds to remain in the hands of the commission merchant for more than 30 days after becoming informed of such sale. (Sec. 6448, Gen. Laws.)

Section 9. Warehouse Receipts and the Uniform Warehouse Receipts Act.

The uniform warehouse receipts act.—This act, which has become law in the States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, and Virginia, was carefully framed and contemplated the eradication of many evils that might arise in marketing goods by the negotiation and transfer of warehouse receipts. It clarifies and aims to protect the rights of the holder of a warehouse receipt, prescribes in definite language the rights and duties of the warehouseman, and seeks to avoid fraudulent and illegal acts on the part of the person depositing goods in the warehouse. Provisions pertinent to cotton marketing are summarized below:

(1) A person who deposits goods to which he has no title, or upon which there exists a lien or mortgage, taking for the goods a negotiable receipt which he afterwards negotiates for value, with the intention of deceiving and without disclosing his want of title or the existence of the lien or mortgage, is deemed guilty of a crime and may be punished by imprisonment for one year, or by a fine of $1,000, or by both. (Sec. 55.)

(2) In any case not provided for by the act, common law rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, is to govern. (Sec. 56.)

(3) If the receipt is issued for goods of which the warehouseman is owner, either solely or in common with others, it must so indicate that fact. It must also show the amount of advances made by the warehouseman and liabilities for which the warehouseman claims a lien. (Sec. 2.)

(4) Duplicate receipts must be so marked on the face of the instrument, and the warehouseman is liable to persons purchasing the subsequent receipt for value, supposing it to be an original. (Sec. 6.)

(5) A warehouseman who issues a receipt knowing that the goods for which the receipt is issued have not been actually received by him, or are not actually under his control at that time, is guilty of crime and may be punished by imprisonment for a term not exceeding five years, or by a fine not exceeding $5,000, or both. (Sec. 50.)

(6) A warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains a false statement is guilty of a crime, and for each offense may be punished by imprisonment for a term not exceeding one year, or by a fine not exceeding $1,000, or both. (Sec. 51.)

(7) The issuance of a duplicate receipt not so marked, except in the case of a lost or destroyed receipt, is a criminal offense, punishable by imprisonment not exceeding five years, or a fine of not more than $5,000, or both. (Sec. 52.)

(8) The warehouseman can not set up title in himself, unless such title is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit of goods for storage, and the warehouseman can not escape liability for refusing to deliver goods according to the terms of the receipt unless he can show title in the manner adverted to. (Sec. 16.)

(9) If goods are delivered to a warehouseman by the owner, or by a person whose act would bind the owner, and the warehouseman delivers a negotiable receipt for the goods, they can not from that time be levied on under an execution, or attached by garnishment, or otherwise while they remain in the hands of the warehouseman unless the receipt is first surrendered to the warehouseman or its negotiation enjoined. (Sec. 25.)

(10) A person to whom a negotiable receipt has been negotiated acquires (1) such title as the person negotiating the receipt had, or had ability to convey to a purchaser in good faith for value, and such title as the depositor, or person to whose order the goods were delivered by the terms of the receipt, had or had ability to convey to a good-faith purchaser for value, and (2) the direct obligation of the warehouseman to hold possession of the goods for him according to the full terms of the receipt. (Sec. 41.)

(11) A person to whom a receipt has been transferred but not negotiated acquires as against the transferror title to the goods, subject to any agreement with the transferror. If the receipt is nonnegotiable, such a person also acquires the right to notify the warehouseman of the transfer of the receipt. Thereupon he acquires the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferror or transferee of a nonnegotiable receipt, the title of the transferror to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferror, or by a notification to the warehouseman by the transferror or a subsequent purchaser from the transferror of a subsequent sale of the goods by the transferror. (Sec. 42.)

(12) When a negotiable receipt has been issued by the warehouseman, no seller's lien or right of stoppage in transit is sufficient to defeat the rights of a good-faith purchaser for value to whom the receipt has been negotiated, regardless of whether such negotiation is prior or subsequent to the notification to the warehouseman who issued the receipt of the seller's claim to a lien or the right of stoppage in transit. The warehouseman is not obliged to deliver, nor would he be justified in delivering, the goods to an unpaid seller unless the receipt first is surrendered for cancellation. (Sec. 49.)

(13) The construction to be placed upon the language of the uniform warehouse receipts act, according to the Louisiana view, is carefully stated in a note to section 62 of the statute of that State, making the act effective, which reads as follows:

"The uniform warehouse act is to be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which have adopted it. This rule of construction prevents the act from being construed in the light of decisions under former statutes of the State which has adopted the act, and requires the statute to be construed in the light of the cardinal principle of the act itself. The purpose is to give effect, within prescribed limits, to the mercantile view of documents of titles, to the exclusion of any inconsistent doctrine previously obtaining in any of the enacting States.

"Where the holder of warehouse receipts clothes another with such indicia of ownership of the goods, that a bona fide purchaser for value is enabled to take title thereto, the rule that the earlier of equal equities should prevail does not

apply, as the latter equities are based upon the action of the holder of the earlier equity, who is thereby estopped.

"Where the owner of goods represented by bills of lading indorses and delivers them to another, taking a trust receipt, and the trustee so clothed with indicia of ownership exchanges the bills for the receipts of the warehouse in which the goods were stored, and then sells the warehouse receipts to a bona fide purchaser, the latter's equities are superior to those of the original owner of the bills of lading. (Commercial Nat. Bank *v.* Canal, Louisiana B. & T. Co., 239 U. S. 520.) Construction of United States Supreme Court is adopted. The omission of one or more of the minor statements prescribed by section 2 of the act, does not invalidate a warehouse receipt, which is in due form as to the essentials of such instruments. A warehouse receipt, giving the name of the depositor, the receipt of the goods, 'deliverable only on the return of this receipt properly indorsed' with the legend 'Negotiable warehouse receipt' printed on the margin, sufficiently indicates that the goods were to be delivered to order of depositor. (Arbuthnot, Latham & Co. *v.* Richheimer & Co., 139 L. 797.)

"A material departure from the provisions of Act 72 of 1876, either in the form of the receipt or the manner in which it is given in pledge, is fatal to the validity of the pledge of the receipt. (Suc. of Gragard *v.* Metropolitan Bank, 106 L. 298.)"

Georgia.—A warehouseman is a depository for hire, and is bound only for ordinary diligence. Failure to deliver the goods deposited on demand makes it incumbent on him to show the exercise of ordinary diligence. Rates customary at the time of storing only can be collected. (Sec. 3503, Civil Code.) Persons, whose charter so authorizes may become bonded warehousemen upon giving proper bonds, with good and sufficient sureties, as required by statute. The warehouseman, unless instructed to the contrary by the depositor, must insure all property stored with him and, when requested, give receipts therefor in negotiable form. However, if the depositor asks for a nonnegotiable receipt, the warehouseman may deliver an instrument in that form. which receipt shall have the word "nonnegotiable" plainly written, printed, or stamped on the face of the receipt. Title to cotton passes to the purchaser or pledgee by delivery to him of the warehouseman's negotiable receipt, signed by the person to whom such receipt originally was given, or by the indorsee of the receipt.

The property stored must be described in the receipt in such a way that its identity could be traced. The receipt must show the brand or distinguishing marks of the property which it covers. It shall also state the rate of charges for storage, the rate and amount of insurance on it, and the amount of the bond given to the court.

An assignment of a nonnegotiable receipt is not effective until recorded on the books of the warehouseman issuing it. The nonnegotiable instrument likewise may be surrendered at any time by its owner, in exchange for a negotiable receipt covering the same goods.

Title to cotton, stored in a public bonded warehouse, passes to a purchaser or pledgee thereof, by delivery to him of the warehouseman's receipt, with an indorsement thereon to the purchaser or pledgee, signed by the person to whom the receipt originally was given by the warehouseman or by the endorsee of the receipt.

Warehousemen are required to keep a book in which shall be entered an account of all transactions relating to warehousing, storing and delivering cotton, goods, wares, and merchandise, and to the issuing of receipts for such chattels, which book shall be open to the inspection of any person actually interested in the property to which such entries relate. (Secs. 2910–2922, Civil Stats.)

South Carolina.—The storage rate for cotton can not exceed 12½ cents per week per bale. Charges for weighing shall not exceed

10 cents per bale. A violation of these provisions makes the person so violating liable to the owner of the cotton in the sum of $10 for each offense, which may be recovered by the owner in any court of competent jurisdiction. (Sec. 3306, Civil Code.) The warehouse commissioner of the State is under duty to have all cotton, stored in State warehouses, insured for its full value. In the event of loss he is to collect the insurance due and pay the same ratably to those lawfully entitled to it. The insurance policy is to be in the name of the State, and the premium is to be collected from the owner of the cotton, the State to have a lien on the cotton for insurance and storage charges, just as for other public warehouses in the State. (Sec. 3389, Civil Code.)

Persons doing business as warehousemen, having in their warehouses cotton on storage for others, are guilty of a misdemeanor, if they dispose of the cotton, or any portion of it, by sale, loan, pledge, or otherwise, without the consent of the owners of the cotton. Conviction carries a penalty of imprisonment for not more than one year, or a fine of not more than $500. However, persons holding mortgages over cotton by reason of having advanced or loaned money on the cotton, still have the rights of mortgages in respect of it. (Sec. 98, Crim. Code.)

Warehousemen, upon the request of the depositor of cotton, in writing, must insure the same. They must give to the depositor a receipt for his goods negotiable in form, describing the property, and stating the brand and distinguishing marks upon it. The receipt must state also the rate of charges for storing the property, the amount and rate of insurance, and also the amount of the bond given to the clerk of the court. However, upon the request of the depositor, the warehouseman shall give him a nonnegotiable receipt, which receipt shall have the word "nonnegotiable" plainly written, printed, or stamped on the face of the receipt. Warehouse receipts, given for cotton deposited with a warehouseman, are negotiable upon delivery when they have been signed by the person to whom the receipt was issued, or by his indorsee. The person to whom the receipt has been transferred, if he is a good faith purchaser for value, is deemed to be the owner of the cotton. No property is to be delivered by the warehouseman except upon the surrender and cancellation of the original receipt, or the indorsement of such delivery thereon, in case of a partial delivery. Warehousemen are required to keep a book of entry in which is to be entered an account of all their transactions relating to warehousing, storing, and insuring cotton, and to the issuing receipts therefor, which books must be open to the inspection of persons actually interested in the property to which such entries relate. (Secs. 3901, 3906, and 3909, Civil Code.)

Texas.—A public warehouse receipt must state that it is issued by a public warehouse, show the date of its issue, the name of the warehouse and its location, description, quantity, number, and marks of the cotton stored, class and weight, date of receipt, date on which the cotton was originally received in the warehouse; that it is deliverable upon the return of the receipt in proper form and upon payment of charges for storage and insurance. All receipts must be numbered, and no two receipts bearing the same number should be issued during the same year, or any duplicate receipts, except in the

case of a lost or destroyed receipt, in which case the new receipt must carry the number of the original receipt, and must be marked "duplicate." Duplicate receipts may be issued only after adequate security is deposited with the warehouseman, to protect him against the rights of a holder of the original receipt in good faith and for a valuable consideration. (Art. 971, Penal Statutes.)

Any person who makes a false statement concerning liens, mortgages, encumbrances or indebtedness of any kind against cotton, or who conceals the existence of liens, mortgages, encumbrances or indebtedness of any kind against it, is guilty of a felony, and upon conviction may be punished by a fine of $1,000 or imprisonment for one year, or by both. (Art. 971e, Penal Statutes.) A person who deposits goods to which he has no title, or upon which there is a lien or mortgage, taking therefor a negotiable receipt, which he afterwards negotiates for value with intent to deceive, and without disclosing his want of title or the existence of the lien or mortgage, is considered to be guilty of a crime, and for each offense may be punished for a term not exceeding one year, or by a fine not exceeding $1,000 or both. (Art. 977t, Penal Statutes.)

When the warehouseman has issued a negotiable receipt for goods on deposit, no seller's lien or right of stoppage in transit is sufficient to defeat the rights of a good faith purchaser for value to whom the receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued the receipt of the fact of existence of seller's lien or right of stoppage in transit. The warehouseman is not obliged to deliver, nor would he be justified in delivering, the goods to an unpaid seller unless the receipt first is surrendered for cancellation.

If there is any encumbrance or a lien of any kind on cotton at the time of its storage in a public warehouse, the nature and amount of same must be clearly set out on the negotiable receipt and filled in and signed by the owner of the cotton before the receipt is issued. Such a statement, however, need not be made if a nonnegotiable receipt is desired. In such cases the public warehouseman issuing the receipt must write or stamp across the face thereof the words "Not negotiable." (Art. 7821c, Texas Civil Statutes.)

The receipt issued against property stored in public warehouses is negotiable and transferable by indorsement in blank or by special indorsement, and the transferee or holder of the receipt is considered to be the actual and exclusive owner of the properly described therein, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges. No public warehouseman may issue warehouse receipts against his own property in his own warehouse. (Art. 7825, Texas Civil Statutes.) No title or right to possession of the goods on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, is sufficient to excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (Art. 7827½h, Texas Civil Statutes.)

A warehouseman's lien on goods deposited or on the proceeds thereof in his hands cover all lawful charges for storage and preservation of the goods, claim for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and

expenses in relation to the goods; also for all reasonable charges and expenses for notice and advertisements of sale, and for sale of goods where default has been made in satisfying his lien. (Art. 7827½mm, Civil Statutes.) However, when a negotiable receipt is issued by the warehouseman for goods held by him, he shall have no lien thereon except for storage charges subsequent to the date of the receipt unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of the article just cited, although the amount of the charges so enumerated is not stated in the receipt. (Art. 7827½o.)

The person to whom receipt has been transferred but not negotiated acquires as against the transferrer title to the goods subject to the terms of any agreement with the transferee. If the receipt is not negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferrer or transferee of a nonnegotiable receipt the title of the transferee to the goods, and the right to acquire the obligation of the warehouseman, may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer or by a notification to the warehouseman by the transferrer of a subsequent purchaser from the transferrer or a subsequent sale of the goods by the transferrer. (Art. 7827½u, Civil Statutes.)

Section 10. The Cotton States Commission.

In 1922 the governors of a number of the cotton-growing States appointed commissioners representing their respective States on a commission to be known as the "Cotton States Commission," organized for the purpose of providing for a general organization, through which the governments of all of the States interested might advise with each other and with the Department of Agriculture of the Federal Government, in respect of certain problems relating to the production and marketing of cotton, including a control of insect pests, a uniform system of warehousing, and a system of financing the farmer during the period of production and marketing, as well as other problems of a like character. It was recognized that under our dual form of government the problem of marketing could best be solved by cooperation between the States and with the aid of the Federal Government. The commissioners of the cotton States met in New Orleans in 1922, and later in the same year in Memphis.

At the Memphis conference it was recommended that the legislatures of the States adopt a statutory plan of organization providing for cotton commissions to represent the respective States at joint conferences with representatives of other States, and with the United States Department of Agriculture. Upon the appointment of the commissioners it would be their duty to advise and cooperate with commissioners appointed by other cotton States and also with the Secretary of Agriculture, in respect of methods which would insure a certain uniformity of legislation in the common interest of all of the cotton States. The act of each State, authorizing the setting up of a cotton commission, was not to take effect until at least six of the

cotton-producing States should have enacted a statute in substantially the terms of the proposed act agreed upon at the Memphis conference.

At such time as six States shall have adopted the act the temporary chairman of the Cotton States Commission shall request the governors of the States that have adopted the act to appoint commissioners to represent their States. It is provided that the act shall continue in force and effect for a term of six years, with the provision that the legislature of any State may discontinue its representation on the commission and withdraw the appropriation provided to cover the expenses of the commission, on 12 months' notice, which notice is to be given to the governors of the other States represented on the commission.

The proposed act, which was drawn up at Memphis, has been ratified by three States, Mississippi, North Carolina, and Tennessee. Upon the ratification of three other States the various acts will become law, and the machinery contemplated will be set up.

The importance of such a commission can not be overestimated, for it will constitute a forum where persons representing all phases of cotton marketing can bring their problems, and where efforts doubtless will be made to insure scientific cotton marketing so far as consistent with proper protection to interested parties.

If such a commission is to function it will find foundation for its work in the uniform warehouse receipts act, which has become law in seven of the States named in this report, the negotiable instruments law which has been adopted without substantial reservation in all of the cotton States named, and the uniform sales act, which has become law only in the State of Tennessee. These three acts cover to a large extent the kind of practices involved in this report.

Section 11. Licensing of Cotton Factors and General Regulatory Statutes.

Alabama.—Municipal corporations may fix the amount of licenses to be paid by trades and businesses, for periods not to exceed one year, the charge for issuing such license not to exceed 50 cents. (Sec. 2154, Political Code.) Produce merchants, handling farm products on commission, must keep a record of produce handled, including the name of the consignor, his address, date of receipt, the kind and quantity of the produce, the date of sale, the name of the purchaser, the prices for which sold, and the items of expense incurred therewith. This record must be retained for one year, and must be open to inspection by the consignor and the commissioner of agriculture. (Sec. 947, Political Code.) Engaging in a commercial undertaking without a license is a misdemeanor. (Sec. 4026, Criminal Code.) All brokers, who lend money on collateral, must, upon demand, give the borrower a receipt or acknowledgement in writing, describing the collateral held, stating the character of the debt, the time of maturity and the amount. Title to such collateral does not pass if there is a willful neglect or refusal to give such acknowledgement or receipt. (Sec. 6743, Civil Code.)

Arkansas.—The statutory law of Arkansas in respect of cotton merchandising is not as complete as in some other States examined, but according to the general rule, and by statute specifically, it is provided that the common law of England, in so far as applicable to

local conditions, and not inconsistent with the Constitution and laws of the United States, or with the constitution and laws of Arkansas, is in force in that State. (Sec. 1432, Code.)

Cities are divided into two classes, cities of the first class to be those having a population exceeding 5,000 inhabitants, and cities of the second class to be those with a population in excess of 2,000 and less than 5,000. (Secs. 7449 and 7451, Code.) The local authority in cities of both classes are authorized to license commercial enterprises at sums fixed by such authority, license fees to be determined on the basis of the kind of business licensed, and the amount of merchandise handled. (Sec. 7618, Code.) The charge for weighing cotton is fixed at the maximum of ten cents per bale. (Sec. 2444, Code.)

Georgia.—The general tax act, which became effective August 15, 1921, provided that persons, firms, or corporations transacting the business of a commission merchant or merchandise broker should pay for that privilege the sum of $100 per year; however, this section of the act was repealed by legislative resolution approved August 13, 1924, which resolution was prompted by an intervening decision of the United States Supreme Court relative to the charging of the brokerage fee to brokers representing exclusively foreign principals. At the present time there is no State tax on commission merchants and merchandise brokers.

Agents must keep their accounts in a regular manner and be always ready with them supported by the proper vouchers; neglect of this is ground for charging them with interest on the balances in hand. (Sec. 3579, Civil Code.) Where persons engaged in weighing cotton, including merchants and factors, charge more than 10 cents per bale for weighing it or more than 5 cents for reweighing, they are guilty of a misdemeanor. (Secs. 557 and 558, Crim. Code.) Commission merchants, factors, and other salesmen are not allowed to include in their bill of expenses for the sale or handling of cotton, either directly or indirectly, any tax or assessment levied upon sales of cotton. (Sec. 1852, Civil Code.)

Louisiana.—License taxes for factors, commission merchants, and brokers are based on their gross annual commissions. Seventeen classes are named by statute, ranging from a tax of $25 per year where gross annual commissions do not exceed $5,000 to $1,750 on gross annual commissions in excess of $250,000. (Act 214, 1906, sec. 4. p. 371, La. Stats.)

Commission merchants, factors, and brokers are required to furnish a bond of $1,000 to the commissioner of agriculture and immigration for the purpose of insuring compliance with the statutory provisions governing this class of business. (Act 8 of 1918, sec. 3, Vol. I, Stats. of La.)

Commission merchants are required to keep complete records of all transactions, purchases made for or on account of others, consignments received, sales made, consignments refused, and consignments claimed to be damaged, short, or inferior, with reason for such refusal or claim. Upon application made by the consignor they must furnish to him the name of the purchaser, his post-office and street address, and a copy of account of sale, immediately upon delivery to the purchaser of the goods sold. Commission merchants are prohibited from charging or deducting commissions on any consignment or any amount ex-

cept the amount paid by the purchaser of the consigned goods. Any commission merchant who misstates the condition of cotton or the condition of the market or any sale made, with intention to defraud, or sells to himself or to any firm, partnership, corporation, or association of which he is a part or in which he is in any way interested directly or indirectly any part of any consignment of cotton for the purpose of deceiving or defrauding the consignor or for the purpose of selling to his own advantage and profit or that of such firm, partnership, corporation, or association shall be deemed guilty of a misdemeanor and may be punished by imprisonment and fine. (Sec. 4, Act 8 of 1918.)

Mississippi.—Cotton brokers and agents engaged in buying or selling cotton or who receive cotton for sale on consignment are taxed $25 a year by the State. (Sec. 6499, General Stats.) Cities and towns having more than 300 inhabitants may, through their mayor or board of aldermen, levy license taxes upon all trades and occupations within the city or town limits, but this levy can not exceed 50 per cent of the State license tax upon the same trade or occupation. (Sec. 5864, Gen. Stats.) All persons engaged in the business of buying and selling cotton for themselves must pay a privilege tax of $100. (Sec. 6500, Code, Supplement of 1921.) Persons doing business without having procured the license required are punishable by a fine of not less than twice the amount of the tax required and not more than five times that amount, or by imprisonment for a term not exceeding six months, or by both. (Sec. 6621, Code.)

North Carolina.—A statute declares that the common law formerly in force, so far as not inconsistent with or destructive of the freedom and independence of the State or its form of government, and not repealed, abrogated, or become obsolete, is to have full force. (Sec. 970, Consolidated Stats.)

Commission merchants, brokers, or dealers buying or selling goods on commission must pay to the State an annual license fee of $10. The license must be procured before beginning business and shall be posted where business is carried on. (Secs. 39, 92, and 94 of an act to raise revenue, 1923.)

In 1921 North Carolina passed an act providing for State warehousing of cotton. The act declares as one of its purposes "to give this important crop [cotton] the standing to which it is justly entitled as collateral in the commercial world." It is administered by the State board of agriculture, through a State warehouse superintendent. Any person owning cotton may store it in State warehouses. Upon receiving a consignment of cotton, the local warehouse manager is to have it graded and stapled by a Federal or State classifier and properly weighed. Official warehouse receipts, bearing the seal of the State of North Carolina, are issued. If an official negotiable receipt be issued for cotton, of which the manager is in part or in whole the owner, the fact of such ownership must appear on the face of the receipt. Cotton stored in a State warehouse must be insured by the superintendent or a subordinate officer, and insurance policies are to be taken out in the name of the State. The State superintendent is empowered to aid the owners of the receipts to secure and negotiate loans on them. He may likewise sell the cotton stored, upon request from the owners. For effecting loans and sales, as provided, he may charge "reason-

able and just commissions without discrimination." However, the State as such refuses to accept liability for the acts of the superintendent; the latter's bond is to be liable for any negligent or unfaithful act from which the owner of the cotton suffers. (An act to provide improved marketing facilities for cotton, 1921, secs. 1, 2, 9, 11, 17, and 18.)

A weigher or purchaser of cotton who makes improper deductions from the true weight of lint cotton is deemed guilty of a misdemeanor, and may be fined $300 or imprisoned. (Sec. 5085, Consolidated Stats.)

Oklahoma.—Section 13 of the State constitution permits the State to select subjects of taxation, to levy and collect revenues independent of the cities or other municipal subdivisions.

Cities and towns have the authority to levy and collect license taxes on brokers and merchants of all kinds. All such license taxes are to be regulated by ordinance. (Secs. 4556, 4557, 4763, Compiled Stats.)

A warehouse commission comprising three members, including the president of the board of agriculture, the State bank commissioner, and the State insurance commissioner, has as its duty the supervision of bonded warehouses of the State. It is provided that they shall meet on the first Tuesday of each month, or oftener when called by the chairman of the board, to receive and pass upon reports made by various warehouses of the State. The commission has authority to set fees for storage in bonded warehouses, and to hold hearings and take testimony relative to a fair and equitable price, when such a procedure would not conflict with the rights and duties of the corporation commission. It is also their duty to designate the life of a certificate, which shall not exceed six months, and to scrutinize and exact a reasonable margin on all products stored. (Sec. 11119, Compiled Stats.) The commissioners are given authority to establish public or State warehouses under the fee system at points having compresses, and they may take charge and have the right to maintain them on a fee basis that will pay expenses of maintenance. All compresses storing cotton for a specified term, and not milling in transit, are to be known as public warehouses and the same rules and regulations apply to them as to other bonded warehouses. (Sec. 11120, Compiled Stats.)

South Carolina.—The law, with regard to general licenses to commercial undertakings, is that in towns or cities of 1,000 inhabitants or more, the town or city council may require the payment of "reasonable sums" by those intending to engage in commercial enterprises within the town or city limits. (Sec. 4545, par. 8, Civil Code.) In cities of 40,000 or over the local authority is permitted to license commercial enterprises upon payment of such sums as may be determined by the town or city authorities, but in no instance is the license fee to exceed $2,500. (Sec. 4546, par. 9, Civil Code.) A special section, relative to Beaufort County (where sea island cotton is grown) provides that "every person, firm, or corporation doing a mercantile business in Beaufort County" shall pay an annual license of $5 per year where the capital invested is over $5,000, and $3 per year where the capital invested is $5,000 or less. (Secs. 3957 and 3958 of the Civil Code.) In respect of long cotton or sea island cotton, it is provided that no traffic in this commodity is lawful unless

licensed by the county treasurer. Violation of this section is a misdemeanor. (Sec. 3315, Civil Code.)

Cotton buyers in the State who purchase from the initial seller are required to keep a book showing the number of bales purchased. Bales so bought must be numbered, with the name of the seller, and the buyer must give the seller a "cotton bill" on which shall be placed the number or numbers on the bale or bales of cotton bought from him. The number on the bale of cotton, as carried on the books of the buyer, must correspond to the number on the "cotton bill." (Sec. 3312, Civil Code.) Violation of this section is punishable by a fine not exceeding $100, and by imprisonment for a term not exceeding 30 days. (Sec. 263, Criminal Code.) Charge for the storage of cotton may not exceed 12½ cents per bale per week, and charge for weighing it shall not exceed 10 cents per bale.[31] Violation of these provisions makes the warehouseman liable in damages to the owner of the cotton, at the rate of $10 for each offense. (Sec. 3306, Civil Code.) Persons engaged in business as sales agents, exporters, or handling cotton on commission are required to furnish, upon demand, to persons for whom the cotton is sold, exported, or handled, a sworn itemized statement, showing the name of the purchaser, grade, weight, and price received for such cotton. This statement is to be furnished with the final account of gross sales, or whenever demanded by anyone who is doing business with such persons. Failure to furnish the statement within the time allowed by statute (10 days) is deemed a misdemeanor, and the offender is subject to fine or imprisonment for not more than 30 days "in the county chain gang." (Sec. 183, Criminal Code.)

Tennessee.—License taxes, payable to the State by cotton factors, are assessed as follows: In cities, towns, or taxing districts of 20,000 inhabitants or over, $25; in cities, towns, or taxing districts of from 10,000 to 20,000 inhabitants, $15; in cities, towns, or taxing districts of from 5,000 to 10,000 inhabitants, $7.50; in cities, towns, or taxing districts of less than 5,000 inhabitants, $5. (Ch. 2, sec. 712, Code.)

Public weighers of cotton are provided for. It is their duty to give and declare exact and just weights. (Sec. 3487, Code.) Compensation for such weighers shall not exceed 10 cents per bale, to be paid by the seller. (Sec. 3489, Code.) It is unlawful for any purchaser or weigher to deduct 2 pounds, or any number of pounds, known as "scalage," from the actual weight of cotton weighed or purchased by them. Purchasers must account to the seller for the actual weight of the bale purchased or weighed, except in cases of wet or damaged cotton, but may deduct a number of pounds for bagging and ties, when the amount to be deducted shall be agreed upon by the parties buying and selling; but the number of pounds agreed upon to be deducted for bagging and ties shall not exceed their actual weight. Violations of this provision are misdemeanors, each offense being punishable by a fine. (Sec. 3490, Code.)

Texas.—Cotton brokers, factors, and commission merchants in cities of 10,000 inhabitants or over must pay to the State an annual license fee of $35, and in all cities and towns of less than 10,000 inhabitants, an annual tax of $18 to the State. (Art. 7355, Civil Stats.) City and town councils also have the power to levy upon and

[31] Prohibits the making, not the paying, of a greater charge. (Holman *v.* Frost, 26 S. C. 290.)

collect taxes from cotton brokers and commission merchants. (Art. 929, Civil Stats.)

Commission merchants are required to make bond in the sum of $3,000, entered into with two or more good sureties who are residents of Texas, in order to insure that they will faithfully and loyally perform agreements and contracts entered into with consignors of produce entrusted to them for sale. (Art. 3827, Civil Stats.) This bond shall be made and filed for record in each county in which the commission merchant maintains an office and in such county suits may be maintained upon the bond of persons claiming to have been damaged by breach of its condition. The bond does not become void upon the first recovery thereon, but may be sued upon until the amount of it is exhausted, but when the bond has been reduced to the sum of $1,500 by suits of recovery the commission merchant is required to enter into a new bond in the sum of $3,000 as required in the first instance. The new bond shall be liable for future contracts, agreements or consignments afterwards entered into, and upon failure of the merchant to give the new bond as required he shall cease doing business as a commission merchant. Engaging in business as a commission merchant without first making and filing the bond provided for is deemed a misdemeanor punishable by a fine of not less than $100 nor more than $500. (Art. 3828, Civil Stats.) Factors and commission merchants are charged with the duty of giving an itemized account, with dates, of sales of cotton made by them for their principals, and must, within five days after the sale of the cotton, send to the consignor the full amount received, less the commission due. If the cotton is sold by weight, the weight of the same is gross and the tare allowed, must be furnished, accompanied by the certificate or memorandum signed by the weigher who weighed the same. Failure of factors or commission merchants to comply with the provisions of this article makes them and their bondsmen liable for actual damages incurred by the consignor by reason thereof, and in addition makes them liable to a penalty of not less than $100 nor more than $500, recoverable by the consignor in a suit for damages. (Art. 3830, Civil Stats.) All drawbacks and rebates of insurance, freight, storage, etc., or for any other kind of labor or service of or to any cotton, are prohibited. (Art. 3832, Civil Stats.)

Virginia.—The tax on brokers and commission merchants is $50, provided the commissions do not exceed $1,000, but when commissions do exceed that figure, the tax is to be $50, plus an additional tax of $1 for each $100, or fraction thereof, of commissions in excess of $1,000. (Appendix 1, tax bill, 1922, sec. 49.)

Brokers and commission merchants must, before selling farm produce on commission, or receiving such produce on consignment, obtain a certificate of registration from the State commissioner of agriculture and immigration. (Sec. 1258, General Laws.) Applicants for this certificate must satisfy the Commissioner of their character, responsibility and good faith in seeking to carry on a commission business. They must also execute and deliver a satisfactory bond. The certificate, when issued, is valid for one year. (Sec. 1258, General Laws.) The commissioner has power to investigate, upon complaint, the records of brokers and commission merchants, to determine whether their business is being properly conducted. When a consignor of produce fails to obtain satisfactory settlements

in any transaction within 30 days after receipt of returns on any consignment, he shall make written complaint to the commission merchants. Failing to secure a satisfactory settlement, a certified complaint may be filed within 10 days with the commissioner. The commissioner will then notify the party complained of, fix a date for hearing at the place of the holder of the certificate, hold the hearing, and dismiss the complaint if unjustified. Otherwise it shall be his duty to bring an action on the bond of the broker or commission merchant within 60 days after the filing of his decision. (Sec. 1260, General Laws.)

Certificates may be denied or revoked (1) when a money judgment has been rendered against the commission merchant, and upon which execution has not been satisfied, (2) where false or improper charges have been imposed for handling or for services rendered, (3) where there has been a failure to account promptly and properly or where settlements have been made with intent to defraud, (4) where there have been any false or misleading statements as to condition, quality or quantity of goods received or held for sale on commission when the same might be known by reasonable inspection, (5) where there has been false or misleading statement or statements as to market conditions with intent to deceive, (6) where the commission merchant purchases directly or indirectly the goods for his own account without prior authority in writing therefor from the consignor. (Sec. 1261, General Laws.)

Section 12. Conclusions on the Law.

The foregoing analysis would indicate that legislation, pertinent to the inquiry just made, has not been lacking in the cotton belt. Whether or not this legislation has been effectively enforced is a matter not within the scope of this portion of the report, and may be determined by applying the principles declared in the laws to the facts developed in the preceding sections, and by drawing analogies from cases cited. Generally speaking, it might be said that an effort has been made by the law-enacting bodies of the Southern States to secure the type of statute that would best suit local requirements. Legislation in some of the States, notably, Texas, Tennessee, and Louisiana, has been developed with painstaking care.

Gratifying steps toward a general realization of common problems have been taken. The path of uniform legislation has been charted by the negotiable instruments law, which was adopted by the last Southern State in August of this year. Followed closely the uniform warehouse receipts act, which is now law in seven of the States named, and in Virginia. The uniform sales act, more leisurely in its progress, has been adopted only by the State of Tennessee, though many States in other sections of the country have given to it the force of law.

The Cotton States Commission seems destined to become an actuality. Within two years after the idea was born, three States have declared for it, and two years is a short space in matters of legislation.

Section 13. Conclusion and Recommendations.

Introduction.—While numerous banks and large cotton dealers have suffered losses through failures of factorage concerns, the country shippers have been the heaviest losers in that their losses

are most severely felt. The banks, and to a less extent the dealers, are generally the first to learn of the financial difficulties of cotton firms and are quick to take action to save as much as possible. The country shippers, therefore, are at a disadvantage in this respect as compared with the banks and dealers because they do not have advance information of the impending failure of the factor holding their cotton. In the case of Barrett & Co. of Augusta, Ga., for example, before it became publicly known that the firm was in severe financial straits, two banks obtained over 1,900 bales of cotton on receipts pledged with them by Barrett, sold this cotton and used the proceeds to satisfy their claims, the balance being returned to the receiver for Barrett & Co. The receiver is suing the banks for recovery of some of the money obtained from the sale of this cotton.

This action of the banks serves to illustrate the advantage enjoyed by banks in general over the country creditors and emphasizes the necessity for remedies which will safeguard the country shippers as well as the banks and large dealers.

From the survey made of the existing laws on this subject it is obvious that many of the practices discussed are illegal. None the less one is faced with the fact of losses through the present methods of cotton handling. The question may be raised, therefore, as to whether the difficulty does not lie rather in the methods of handling than in defects in the legal situation.

It seems obvious that much could be done by the exchanges and the banks to improve conditions simply through a more general enforcement of rules and regulations of the character of those which have already been taken in certain parts of the Cotton Belt. Assuming that such remedial action should follow the lines of voluntary measures taken by the trade and the banks, the following suggestions are offered:

(1) The cotton exchanges should adopt rules whereby the consignee is forbidden to sell cotton to himself or an organization in which he is financially interested. If this be deemed too drastic, he should be forbidden to do so without the express consent of the consignor. Appropriate penalties by way of suspension and expulsion should be provided to enforce these rules. This should, of course, be subject to proper qualifications permitting the consignee to sell the cotton to himself or to others to protect advances to consignor in the event of a market decline.

(2) The exchange should be required to keep records of spot sales, including exact time of all sales, grades, staples, etc., and to provide the necessary mechanism to enable the consignor to compare the price obtained by him on sales to the factor with other sales of cotton of similar character in the same market.

(3) The cotton exchanges should require factors to report to their shippers the names of the purchasers of their consignments.

(4) Exchange rules should require the suspension or expulsion of any member not returning the full amount of the sales price, less the proper deductions, to the consignor.

(5) The exchanges and the banks should both adopt rules requiring cotton factors to obtain notes from shippers covering all advances made and further requiring them to present these notes to the banks in applying for all loans secured by consigned cotton.

(6) Cotton shippers, instead of consigning cotton to the factor without reservation, should consign either to themselves or to the factor as agent for themselves. If this were done, persons with whom the bill of lading is negotiated will be on notice that the factor is acting as the agent of the shipper. Banks and cotton exchanges would be performing a real service if they helped to bring this about.

(7) The block receipt for a number of bales of cotton should be abolished and the single-bale warehouse receipt adopted in its stead. This form of receipt has been in use successfully at Memphis and also at New Orleans. All the exchanges should adopt this form of warehouse receipt. The banks are in a position to compel its adoption by refusing loans based on block receipts. Each single-bale receipt should be required to show the weight of the cotton and, at least in the case of consigned cotton, the grade.

(8) The banks should require that all receipts pledged as collateral and released on a trust receipt be indorsed to that effect and the exchanges should adopt rules requiring that all receipts carry on the back a form of statement adapted to such indorsement. This would serve to prevent receipts being pledged more than once.

(9) The exchanges and banks should adopt rules requiring that all shipments of consigned cotton be stored in a Federal licensed warehouse or a Federal licensed section of a warehouse and the banks should refuse to loan on consigned cotton unless so stored.

(10) The exchanges or the banks, or both of them, should adopt one of the following plans:

(*a*) Guaranty by a surety company of the weight and character of the cotton supporting each receipt.

(*b*) A custodian system for warehouses under the supervision of the exchange, or the banks, or both, providing for the signing of receipts by the custodian and inspection of warehouses and actual counting of bales.

(11) The uniform receipts act which is in effect in seven of the cotton States and Virginia should be adopted by all the cotton States. One provision of this act requires that if a receipt is issued for goods of which the warehouseman is owner either solely or in common with others the extent of his equity must be indicated on the receipt. Violations of this provision of the act should be made punishable by a heavy fine or imprisonment, or both.

It is believed that the adoption of these or similar measures would have an excellent effect, particularly if it were general. Voluntary action of this character by the exchanges and the banks appears to be altogether unlikely, however, in any short period of time. Without assuming to pass upon the constitutional power of Congress to legislate in this field, it is believed that if it be the judgment of Congress that the transactions discussed are a part of interstate commerce, Federal legislation would be of great value in remedying these conditions. Such legislation might well be directed along substantially the following lines:

1. Making it a criminal offense for consignee in the course of interstate or foreign commerce (*a*) to sell the shipper's cotton to themselves without his express consent; (*b*) to fail to return to or to credit to the shipper within a specified time after the sale is made the full amount of the sales price, less proper deductions such as commission fees, charges for storage, interest, and insurance.

2. Requiring consignees to obtain from shippers notes covering the amounts of all advances on cotton shipped or to be sold or shipped in interstate or foreign commerce.

3. Requiring all cotton warehouses licensed under the Federal warehouse act to use uniform single bale receipts with a form on the reverse side which, when filled out, will show that the receipt in question has been pledged and is released under a trust receipt.

4. Requiring all shipments of consigned cotton in the course of interstate and foreign commerce to be stored in a Federal licensed warehouse or Federal licensed section of a warehouse. Warehouses licensed either in whole or in part under the Federal warehouse act are so numerous and widely distributed that such a requirement is not onerous.

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